

SUPPLY TERMS AND CONDITIONS

1. DEFINITIONS

1.1 In the Contract:

Applicable Laws means the common law and all statutes, regulations, by-laws, ordinances or subordinate legislation in force, from time to time, for the receipt, storage and usage of the Goods.

Approval means any licence, permit, consent, approval, determination, certificate or permission from any Authority or under any Applicable Law, or any requirement made under or issued in accordance with any Applicable Law, which must be obtained or satisfied (as the case may be).

Authority means:

- (a) any governmental or semi-governmental or local government authority, administrative or judicial body or tribunal, department, commission, public authority, agency, Minister, statutory corporation or instrumentality; and
- (b) any utility (including electricity, telecommunications, water and gas) or other legal entity having statutory rights in respect of Approvals.

Business Day means a day that is not a Saturday, Sunday or public holiday in the state of Queensland.

Credit Application means an application to receive Goods and/or Services from Westlink in accordance with the Credit Terms and Conditions and these Supply Terms and Conditions.

Credit Terms and Conditions means Westlink's credit terms and conditions (as amended from time to time).

Customer is the entity identified as the 'Applicant' in a Credit Application form which the Customer has submitted to Westlink.

Daily Terminal Gate Price means the daily terminal gate price for fuel at Brisbane, Queensland.

Equipment means the Customer's equipment which is relevant to the subject matter of this Contract and includes fuel storage tanks and associated fittings and accessories.

Fees mean the amount payable by the Customer to Westlink for the Goods and/or Services provided, which shall include the price charged to the Customer by Westlink for any fuel (which price will be charged by reference to the Daily Terminal Gate Price) ordered by a Customer, any associated transport costs and an amount equal to the GST payable on such amounts at the prevailing rate of GST.

Good Industry Practice means practices undertaken in accordance with all of the following:

- (a) in a sound and workmanlike manner with due care and skill and otherwise in accordance with generally accepted best practice;
- (b) using Equipment and materials which are subject to regular maintenance and fit for their Intended Purpose; and
- (c) in accordance with Applicable Laws and Approvals.

Goods mean fuel.

GST has the same meaning as in the GST Act.

GST Act means *A New Tax System (Goods & Services Tax) Act 1999* (Cth) as amended from time to time.

Intended Purpose means, as applicable:

- (a) the use and storage of the Goods; and
- (b) any other purpose for which the Customer has ordered the Goods.

Loss means any right to payment or indemnity, claims, demands, legal proceedings, arbitration, dispute resolution proceedings or other causes of action whatsoever, debts, costs, damages, expenses, charges, penalties, outgoings, losses, and loss of use, profits, revenue or earnings (including consequential loss), liabilities or obligations of whatever nature and whether arising by contract, in tort, under any statute or otherwise at law (as the circumstances may require).

Metering Equipment means any meters, gauges and other equipment as required to measure the quantity of Goods supplied to the Customer.

Order means any written or oral request for Goods and/or Services as made by the Customer from time to time, which may be a one-off or standing request.

Personnel mean the employees, officers, contractors, subcontractors and agents of Westlink.

Services mean collecting and delivering the Goods.

Site means the address specified by the Customer in an Order as being the address where the Goods and/or Services must be provided and/ or collected (as applicable).

Supply Terms and Conditions means these terms and conditions (as amended from time to time)

Tax Invoice has the same meaning as in the GST Act.

Term has the meaning given in clause 6.1.

Westlink means Westlink Petroleum Pty Ltd ACN 143 514 274.

2. AGREEMENT

2.1 The Contract consists of:

- (a) any Order accepted by Westlink from time to time;
- (b) the Credit Terms and Conditions; and
- (c) these Supply Terms and Conditions.

2.2 If there is any inconsistency between any of the aforementioned parts of this Contract, then the documents shall apply in descending order of priority, to the extent of any inconsistency.

3. DELIVERY AND RISK

3.1 In consideration for the Customer agreeing to pay all amounts payable to Westlink pursuant to this Contract, Westlink agrees to provide the Goods and/or Services to the Customer in accordance with the Contract.

3.2 A Customer may, from time to time, submit an Order, either on a one-off basis or as a standing order, which Order is irrevocable and will be immediately binding upon it being accepted by Westlink.

3.3 The Customer may amend or cancel any Order for Goods and/or Services that have not yet been provided to the Customer by giving a minimum of three (3) days' prior written notice to Westlink.

3.4 Westlink shall not be liable, and the Customer agrees to hold Westlink harmless, for any Loss arising from any event or circumstance which is not within the reasonable control of Westlink that prevents Westlink from providing the Goods and/or Services at a particular date and/or time, including, but not limited to, any industrial action, fire or explosion, inclement weather, natural disaster, any act or omission of the Customer and/ or any other circumstance that renders it actually or potentially unsafe for Westlink to provide the Goods and/or Services at the Site.

3.5 The quantity of any Goods provided to the Customer will be metered by Westlink and recorded in a delivery docket.

3.6 Where the Customer is of the view that the quantity of Goods as recorded in a delivery docket does not reflect the quantity of Goods delivered, the Customer must promptly (and not more than 48 hours after the Goods have been delivered to the Site) give written notice to Westlink providing details of the nature and extent of the purported inaccuracy.

3.7 Where the Customer has provided Westlink with written notice in accordance with clause 3.6, Westlink shall, within 15 Business Days of the Customer's notice, review the delivery docket and inspect the Metering Equipment.

3.8 Unless it is determined that the Metering Equipment was manifestly inaccurate, a delivery docket will be final and conclusive evidence of the quantity of Goods delivered to the Site.

3.9 The Customer assumes all risk and liability for its use and possession of the Goods on and from the point of time that the Goods pass the perimeter of the Site. Title to the Goods will pass to the Customer upon the later of the date that the Customer takes possession of the Goods and the date that the Customer has paid (in full) any amounts owed to Westlink pursuant to this Contract.

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- 3.10 The Customer irrevocably agrees (and warrants that it has obtained all required third party consents) to provide Westlink with access to the Site at any of the times agreed between the Customer and Westlink for delivery of the Goods and/or Services.
- 3.11 The Customer agrees that should Westlink (acting reasonably) be of the opinion that the Site or Equipment does not meet the requirements of this Contract and/or is not otherwise safe or fit for purpose, then, without prejudice to any of Westlink's other rights or remedies under this Contract or at law, Westlink may immediately (without prior notice) refuse to provide and/ or suspend the provision of Goods and/or Services to the Customer.
- 4. GENERAL OBLIGATIONS OF THE CUSTOMER**
- 4.1 The Customer irrevocably represents and warrants that:
- (a) the Site and Equipment is, and will for the duration of the Term remain, safe and adequately maintained in accordance with Good Industry Practice and otherwise fit for the Intended Purpose; and
 - (b) it has obtained, and will maintain for the duration of the Term, all necessary Approvals.
- 4.2 As an inducement to Westlink agreeing to provide Goods and/or Services to the Customer, the Customer represents and warrants to Westlink that it has, prior to the date of this Contract, taken out and will maintain for the duration of the Term: public liability insurance against all third party risks, including liability for damage or injury of any kind to any property or person for not less than \$2 million for any single incident, and any other insurance required by law.
- 4.3 The Customer acknowledges and agrees that each representation, warranty and undertaking contained in this Contract shall be given on the date of its Credit Application and shall be deemed to be repeated on each date that it submits an Order to Westlink and each day that Westlink provides Goods and/ or Services to the Customer in accordance with any such Order.
- 5. FEES, INVOICING AND GST**
- 5.1 Westlink shall issue a Tax Invoice to the Customer for the Fees, which the Customer must pay within seven (7) days of the date of issue, unless Westlink has agreed to such other date.
- 5.2 Without limiting any other clause, the Customer acknowledges and agrees that if Westlink exercises its rights in accordance with clause 3.11, the Customer indemnifies Westlink for any Loss incurred by Westlink in its anticipation of performing its obligations under this Contract, including, but not limited to, Loss incurred in transporting any Goods to Site that are not delivered to the Customer.
- 5.3 If the Customer does not pay any amount payable to Westlink (in full) by the time that amount is due, then:
- (a) Westlink may charge a monthly recurring administration fee for the overdue amount of one hundred Australian dollars (\$100.00) (exclusive of GST);
 - (b) the Customer must reimburse Westlink for all Loss incurred by Westlink's mercantile or recovery agents in respect of anything instituted or being considered against the Customer in respect of amounts payable; and
 - (c) interest calculated on a daily basis at a rate equivalent to four percent (4%) higher than the interest rate fixed under Part 5 of the *Taxation Administration Act 1996* (NSW), from (and including) the date the payment was due until (but excluding) the date all amounts outstanding are received in full (including administration fees and interest).
- 6. TERM AND TERMINATION**
- 6.1 This Contract commences on the date that Westlink gives notice to the Customer of the acceptance of its Credit Application and continues until terminated in accordance with clause 6.2 (Term).
- 6.2 Westlink may at any time, and at its sole discretion, terminate this Contract for its convenience or for cause, which termination shall be effective immediately upon Westlink giving written notice to the Customer.
- 6.3 Any termination of this Contract will be without prejudice to any of Westlink's rights or entitlements at law in respect of anything done or omitted to be done in accordance with this Contract prior to such termination.
- 7. LIABILITIES AND INDEMNITIES**
- 7.1 The Customer acknowledges and agrees that, except to the extent that liability cannot be limited or excluded by law, Westlink's liability to the Customer for any Loss, howsoever arising, under or in connection with this Contract (whether by way of an indemnity, statute, in tort (for negligence or otherwise)), is limited, in the aggregate, to the total payments received by Westlink from the Customer in accordance with this Contract.
- 7.2 Without limiting any other clause:
- (a) the Customer acknowledges and agrees that Westlink does not warrant, and will not otherwise be liable in connection with, the quality, suitability, compatibility or fitness of the Goods and/ or Services to be provided to the Customer and that all representations or warranties regarding merchantability, quality or fitness of the Goods and/or Services, including for any particular purpose or otherwise, are excluded unless expressly included in these Supply Terms and Conditions; and
 - (b) the Customer irrevocably agrees to indemnify, and to keep indemnified, Westlink and each of its Personnel (**Indemnified Person**) and to hold each of them harmless, against all Loss suffered or incurred by an Indemnified Person arising out of this Contract and/ or by providing the Goods and/or Services to the Customer, including any breach by the Customer of any term of this Contract (including any representation or warranty), except to the extent that the Loss was a direct result of:
 - i. a negligent act or omission of Westlink or its Personnel; or
 - ii. a material breach by Westlink of a material term of this Contract.
- 8. GENERAL**
- (a) Westlink may vary these Supply Terms and Conditions at any time.
 - (b) Where the Customer has submitted a standing Order, the varied Supply Terms and Conditions will not take effect until the earlier of:
 - i. the time immediately after the next instance that Westlink has provided the Customer with any Goods and/ or Services pursuant to that standing Order; and
 - ii. the date that is seven (7) days after Westlink has provided written notice to the Customer of such variation.
 - (c) The Customer may not assign the Contract or any part thereof or otherwise deal with its rights, title and interests thereunder without Westlink's prior written consent (which may be granted or refused in Westlink's sole discretion).
 - (d) Clauses 3, 5, 7, and this clause 8(d), shall survive the termination of this Contract.
 - (e) Any waiver or relaxation by a party partly or wholly of any term or condition of the Contract is valid only if in writing and signed by that party. Any such waiver or relaxation is restricted to its written terms and unless expressly stated otherwise applies to a particular occasion only, is not continuing and does not constitute a waiver or relaxation of any other term or condition.
 - (f) The Contract can only be amended, modified, varied, released or discharged by written agreement of the parties.
 - (g) If any provision in the Contract is voidable or unenforceable then that provision will be severed and the rest of the Contract will remain in full force and effect.