

# 1. Shell Card Terms and Conditions

June 2021

## DIVISION 1 - General Shell Card Terms and Conditions

### 1. ACCEPTANCE OF SHELL CARD TERMS AND CONDITIONS

The Customer acknowledges acceptance of these Shell Card Terms and Conditions in respect of the use of a Shell Card and in respect of the Customer's account for a Shell Card upon first use of that Shell Card. In the event of any inconsistency between the terms of an executed agreement between Viva Energy and the Customer and these General Shell Card Terms and Conditions, the terms of the executed agreement shall prevail to the extent of the inconsistency.

### 2. DEFINITIONS AND INTERPRETATION

In these General Shell Card Terms and Conditions unless the context otherwise requires:

**"Customer"** means the partnership, firm, body corporate or other person named in the Application applying for the Shell Card.

**"Application"** means the application form and any related documentation signed by or on behalf of the Customer applying for the Shell Card account.

**"Authorised User"** means a person authorised by the Customer to use the Customer's Shell Cards and is deemed to be an agent of the Customer.

**"Business Day"** means any day other than a Saturday, Sunday or public holiday in Melbourne, Victoria.

**"General Shell Card Terms and Conditions"** means these General Shell Card Terms and Conditions contained in Division 1 of Section 8 of this Application as amended from time to time and the Customer's Application, together with any other terms relating to the Shell Card scheme or the Customer's Shell Card account contained in written correspondence from Viva Energy.

**"Motor Fuels"** means unleaded, unleaded E10, Unleaded 95, premium unleaded, V-Power, liquefied natural gas (LNG) and diesel fuel (on-road use only), together with other motor fuels nominated by Viva Energy from time to time as available on the Customer's Shell Card at Nominated Premises.

**"Nominated Premises"** means premises nominated by Viva Energy from time to time as Shell Card merchants.

**"Nominated Vehicle"** means a vehicle nominated by the Customer for a Shell Card in the card order form in the Application or by the Customer in writing.

**"Nominated Vehicle Shell Card"** means a Shell Card for use with a Nominated Vehicle, the Vehicle Identification Number of which is recorded on the Shell Card, together with the Customer's name and the Viva Energy identifying number.

**"Non-Shell LPG"** means automotive LPG, other than Shell LPG.

“**Other Goods and Services**” means products and services other than Motor Fuels, Shell LPG and Non-Shell LPG nominated by Viva Energy from time to time as available on the Customer’s Shell Card at Nominated Premises.

“**Personal Information**” has the meaning given in the *Privacy Act 1988* (Cth).

“**Personal Shell Card**” means a Shell Card for use by a specified Authorised User, whose name is recorded on the Shell Card, together with the Customer’s name and the Viva Energy identifying number.

“**PIN**” means a 4-digit personal identification number.

“**Product**” means Motor Fuels, Shell LPG, Non-Shell LPG and Other Goods and Services.

“**Shell Card**” means all Shell Cards (including, without limitation, Nominated Vehicle Shell Cards and Personal Shell Cards) issued to the Customer by Viva Energy.

“**Shell Card Terms and Conditions**” means the terms and conditions contained in Section 8 of this Application and any other terms expressly incorporated by Section 8 of the Application .

“**Shell Card Website Facility**” means the Shell Card Online website and any website facility which replaces Shell Card Online, as notified by Viva Energy.

“**Shell LPG**” means automotive LPG sold at the Nominated Premises under the Shell “AutoGas” brand.

“**Vehicle Identification Number**” means the vehicle registration number or any other number requested by the Customer and agreed to by Viva Energy.

“**Viva Energy**” means Viva Energy Australia Ltd (ABN 46 004 610 459).

Unless the context requires otherwise singular words include plural and vice versa, person includes a company and vice versa and all references to a clause are to a clause in these General Shell Card Terms and Conditions. Headings are for convenience only. All references to money are to Australian currency.

### **3. SHELL CARD**

If Viva Energy accepts the Customer’s application pursuant to the Application, Viva Energy may issue a Shell Card to the Customer for each:

- (a) Nominated Vehicle; or
- (b) Authorised User,

to obtain Product at Nominated Premises. However Viva Energy may elect, at any time in its absolute discretion, not to issue a Shell Card or a particular type of Shell Card for a Nominated Vehicle or Authorised User.

### **4. SUPPLY OF PRODUCT**

(a) If a valid Shell Card is presented, supplies of Product will be made to the Customer at Nominated Premises, subject to any transaction limits set by Viva Energy from time to time. To the extent permitted

by law, Viva Energy will not be liable in respect of any loss or damage suffered by the Customer howsoever arising under or pursuant to these General Shell Card Terms and Conditions (whether by negligence or otherwise), including arising out of or associated with the supply of Products, and in respect of any liability which cannot be excluded such liability shall be discharged by Viva Energy either:

- (i) re-supplying the Product; or
  - (ii) supplying an equivalent Product, or paying for the costs thereof, where this is permitted by law.
- (b) Viva Energy will not be liable for a failure or delay in delivering Product or in complying with these General Shell Card Terms and Conditions, if that failure or delay is due to:
- (i) a strike or other industrial action, compliance with a government request, a shortage of supply, or any event beyond its reasonable control; or
  - (ii) the inability or refusal of the operator of the Nominated Premises to supply the Product requirements of the Customer for any reason.

The supply of Motor Fuels, Shell LPG or Non-Shell LPG on Shell Card must be into the tank of the Nominated Vehicle (or road vehicle, in the case of a Personal Shell Card).

## **5. ACCOUNTHOLDER'S PURCHASES**

- (a) When using a Shell Card the Customer is deemed to purchase the Products from Viva Energy.
- (b) Property in Motor Fuels, Shell LPG and Non-Shell LPG purchased on Shell Card will pass to the Customer immediately prior to the product passing into the storage tank of the relevant vehicle. Property in any other Product purchased on Shell Card will pass to the Customer upon the completion of the transaction processing the Shell Card at the Nominated Premises.
- (c) It is a condition of use of a Shell Card that the Customer purchases Motor Fuels to the value of not less than \$150 per month.

## **6. CARD USE**

Unless Viva Energy has received the Customer's notification in writing of loss, theft or possible unauthorised use of a Shell Card, the Customer authorises Viva Energy to debit the Customer's Shell Card account with every purchase of Products made by a person presenting a Shell Card at the Nominated Premises to whom the Products were supplied, including where a transaction exceeds any transaction limit set by Viva Energy or the Customer. It is the obligation of the Customer to collect and retain sales dockets issued at the time Products are purchased.

## **7. NOMINATED VEHICLES**

The Customer acknowledges that Nominated Vehicle Shell Cards are issued as a management tool and do not provide additional security. The Customer will be liable to Viva Energy for all transactions made

with a Nominated Vehicle Shell Card, including where the transaction is in respect of a vehicle other than that identified on the Shell Card. It is the responsibility of the Customer to ensure that the Nominated Vehicle Shell Card presented by the person refuelling is valid for use by the person presenting the card and for use for the vehicle in question.

## **8. AUTHORISED USER**

The Authorised User of a Personal Shell Card whose name appears on the Shell Card is the only person permitted to use that Personal Shell Card.

## **9. UNAUTHORISED USER**

Except as otherwise expressly stated in these General Shell Card Terms and Conditions, the Customer will be liable to Viva Energy for all Shell Card transactions processed on the Customer's Shell Card(s), including, without limitation, where, in respect of a Personal Shell Card, a transaction is processed in circumstances where the Authorised User is not the person presenting the Shell Card. The Customer shall ensure that Authorised User(s) complies with these General Shell Card Terms and Conditions.

## **10. PIN**

If a PIN is issued with a Shell Card, the Authorised User must use the PIN when using the Shell Card at Nominated Premises. The Customer must ensure that the PIN is only used by Authorised Users and not disclosed directly or indirectly to any person not authorised to use the Shell Card.

## **11. PROPERTY**

All Shell Cards remain the property of Viva Energy. The Customer must immediately return all Shell Cards that are no longer used, or are expired, cancelled or otherwise invalid, to Viva Energy cut in half, unless otherwise agreed by the parties.

## **12. LOST, STOLEN OR MISUSED CARDS**

(a) If a Shell Card is lost, stolen or subject to unauthorised use, the Customer must immediately notify Viva Energy at:

**Shell Card Customer Service Centre**

**GPO Box 872K MELBOURNE 3001**

**Telephone 13 16 18, Facsimile 1300 134 472**

**Email : shellcard-au@vivaenergy.com.au**

**or at any other address Viva Energy may require.**

(b) If notification of an unauthorised use, loss or theft of a Shell Card is given verbally it must be confirmed in writing within 3 days.

(c) The Customer will be liable for any use of a Shell Card by any person before notification in

accordance with these General Shell Card Terms and Conditions.

(d) After Viva Energy has been notified and provided that this clause 12 has been fully complied with, the Customer shall have no further liability for Shell Card transactions other than transactions made by a person who has ceased to be an Authorised User where the Customer has allowed the Shell Card to remain in the possession of that person.

(e) The Customer must provide Viva Energy with all the information that the Customer has in its possession or that it can reasonably obtain, regarding the unauthorised use, loss or theft of a Shell Card.

### **13. CANCELLATION OF SHELL CARDS**

(a) Viva Energy may either suspend, cancel or terminate any or all of the Customer's Shell Cards or the Customer's Shell Card account for any reason at any time without notice and without liability, including without limitation, for breach by the Customer of these General Shell Card Terms and Conditions, or for non-use of a Shell Card.

(b) The Customer must destroy or cut in half all cancelled Shell Cards immediately.

(c) Viva Energy will cancel an Customer's Shell Card account if the Customer forwards to Viva Energy a written authorisation in a form approved by Viva Energy to cancel the Customer's Shell Card account.

(d) The Customer will remain liable in respect of the use of any Shell Card up until:

- (i) in the case of Viva Energy cancelling the Shell Card, the destruction of the Shell Card; and
- (ii) in the case of the Customer cancelling the Shell Card, the date on which the Shell Card is cancelled by Viva Energy.

(e) On cancellation of all the Customer's Shell Cards, the debit balance of the Customer's Shell Card account becomes immediately due and payable to Viva Energy.

### **14. EFFECTING A PURCHASE OF PRODUCTS**

#### **14.1 Sales Docket**

On completion of a Shell Card transaction processed electronically at a Nominated Premises the Authorised User will be given a sales docket at the time of purchase, which will include:

- (a) Card number;
- (b) Description of Product;
- (c) Pump price of Product (if applicable);
- (d) Quantity of Product;
- (e) Total value of Product (based on the pump price, if applicable);
- (f) Time and date of purchase;
- (g) Odometer reading (if applicable and where provided);

- (h) Name of Nominated Premises; and
- (i) Address of Nominated Premises.
- (j) The Customer acknowledges that the sales docket is the only confirmation of the transaction issued to the Customer or Authorised User at the point of sale.

#### 14.2 Manual Transactions

Where a Shell Card transaction is completed manually at a Nominated Premises, the Customer or Authorised User must sign the sales docket.

### 15. PRICE

Unless otherwise agreed by the parties in writing, the Customer will be charged as follows:

#### 15.1 Motor Fuels and Shell LPG

The GST inclusive price for Motor Fuels and Shell LPG is the GST inclusive pump price at the time the fuel is purchased from the Nominated Premises less any agreed discount (expressed on a GST inclusive basis).

#### 15.2 Other Goods and Services

The GST inclusive price for Other Goods and Services is the GST inclusive retail price at the time the item is purchased from the Nominated Premises.

#### 15.3 Non-Shell LPG

The GST inclusive price for Non-Shell LPG is the GST inclusive pump price at the time the Non-Shell LPG is purchased from the Nominated Premises.

### 16. CHARGES FOR USE OF SHELL CARD

For purchases made on the Customer's Shell Card, Viva Energy will debit the Customer's Shell Card account with:

- (a) the price of the Products;
- (b) fees, including but not limited to the fees in Viva Energy's list of scheduled fees and charges revised from time to time;
- (c) government taxes and charges; and
- (d) reasonable enforcement expenses incurred by Viva Energy in enforcing these General Shell Card Terms and Conditions.

### 17. SHELL CARD INVOICE AND STATEMENT

- (a) Viva Energy will issue after the end of the month or other agreed period ("Billing Period"), a transaction report of the Customer's Shell Card account, detailing the Customer's Shell Card purchases and any applicable charges, together with a tax invoice.

- (b) Subject to clause 17(d), the Customer will pay the amount shown on the tax invoice no later than the 21st day following the end of the Billing Period, or by such other date as agreed in writing (the “**Due Date**”). The Customer must pay the amount shown on the tax invoice in full without asserting any set off, counter claim or right to withhold whatsoever.
- (c) Payment will be made by means of an automatic bank debit by Viva Energy of the Customer’s bank account pursuant to the terms of clause 18.
- (d) If any amounts are not paid by the Due Date, then, on notification from Viva Energy, the balance of the Customer’s account (including purchases made in the current Billing Period) will become immediately payable and interest shall be payable in accordance with clause 17(e).
- (e) If any amounts are not paid by the Due Date, Viva Energy may charge the Customer simple interest on the overdue amount from the Due Date until payment, accruing daily and calculated at 5% above the AFMA 90 Days Bank Bill Swap Reference Rate: Average Mid quoted on the first Business Day of the month in which the interest accrues.

## **18. VIVA ENERGY DIRECT DEBIT ARRANGEMENT (CLIENT SERVICE AGREEMENT)**

### 18.1 Drawing Arrangements

- (a) The Customer acknowledges that by completing the bank account details and signing the Shell Card Application that moneys due to Viva Energy will be drawn from that Customer’s nominated bank account. Viva Energy will initiate a drawing on or after the Due Date. If funds are not available in the Customer’s nominated bank account on the Due Date, Viva Energy reserves the right to charge the Customer an unpaid direct debit fee.
- (b) If the Due Date falls on a non-Business Day, Viva Energy will draw the amount on the first Business Day before the Due Date.
- (c) Viva Energy reserves the right to cancel the drawing arrangements at any time after providing the Customer with 14 days’ notice and to arrange an alternate payment method with the Customer.
- (d) Viva Energy will keep all information pertaining to the Customer’s Direct Debit Arrangement private and confidential. Viva Energy will make reasonable efforts to keep any such information secure and to ensure that any of its employees or agents who have access to information about Customers do not make any unauthorised use, modification, reproduction or disclosure of that information. Viva Energy will only disclose information that we have about Customers:
- (i) to the extent specifically required by law; or
  - (ii) for the purposes of this agreement (including disclosing information in connection with any query or claim).

## 18.2 Customer's rights

(a) Subject to clause 18.3:

(iii) the Customer may terminate the drawing arrangements at any time by giving written notice to Viva Energy. Such notice must be received by Viva Energy at least 5 Business Days prior to the Due Date;

(iv) the Customer may stop payment of a particular drawing by giving written notice to Viva Energy. Such notice must be received by Viva Energy at least 5 Business Days prior to the Due Date;

(v) the Customer may request changes to the frequency of drawings by contacting Viva Energy and advising of changes no less than 5 Business Days prior to the Due Date.

(b) Where the Customer considers that a drawing has been initiated incorrectly the Customer should take the matter up directly and immediately with Viva Energy so that Viva Energy can investigate. Alternatively the Customer may take it up directly with its financial institution. If Viva Energy conclude as a result of its investigations that a Customer's account has been incorrectly debited Viva Energy will respond to the Customer's query by arranging for the Customer's financial institution to adjust the Customer's account (including interest and charges) accordingly. Viva Energy will also notify the Customer in writing of the amount by which the Customer's account has been adjusted. If Viva Energy conclude as a result of its investigations that a Customer's account has not been incorrectly debited Viva Energy will respond to the Customer's query by providing the Customer with reasons and any evidence for this finding in writing.

(c)

18.3 It is the Customer's responsibility to ensure that:

(a) it has checked with its financial institution that direct debiting is available from the Customer's account;

(b) sufficient funds are available in the nominated bank account to meet a drawing on its Due Date;

(c) the authorisation given to draw on the bank account as completed in the Shell Card Application is identical to the account signing instructions held by the financial institution where the account is based;

(d) Viva Energy is advised if the bank account is transferred or closed; and

(e) a suitable alternate payment method is arranged if the drawing arrangements are cancelled either by the Customer, the nominated bank or Viva Energy.

## 18.4 Credit Card Drawing Arrangement

If Section 6B of this Application has been completed for payment by credit card, this clause 18.4 applies.

(a) If a credit card section is completed and submitted to Viva Energy with respect of the Customer's Shell Card Account, payment of the Customer's Shell Card tax invoice will be made by auto direct debit



against the nominated credit card from the date that the completed credit card section is processed by Viva Energy, or, if so notified in writing by Viva Energy to the credit card holder, with respect to the Customer's next Shell Card tax invoice; and credit card holder, with respect to the Customer's next Shell Card tax invoice.

- (b) The Customer acknowledges that by signing the Credit Card Authority Form:
- (i) monies due to Viva Energy will, subject to any notice to the contrary from Viva Energy, be drawn from the Shell Card Customer's nominated credit card account;
  - (ii) a surcharge of 0.8% ex GST per invoice (which is subject to change by Viva Energy with 30 days' notice) will apply to each application of the direct debit credit card drawing arrangement (for the avoidance of doubt, if the direct debit credit card drawing arrangement is applied to a Shell Card tax invoice which has not included the surcharge, the surcharge with respect to that invoice is not waived and will be payable in addition to any new direct debit credit card surcharge in the next Shell Card tax invoice); and
  - (iii) clauses 18.1 - 18.3 of the General Shell Card Terms and Conditions will apply to credit card drawing as if references to "bank account" was replaced with the nominated credit card account.
- (c) Viva Energy will only initiate drawing against the credit card when a payment is due from the Customer.
- (d) Viva Energy will not change the amount or frequency of the drawings arrangement without the Customer's prior approval unless expressly permitted by the Shell Card Terms and Conditions.
- (e) Viva Energy's drawing from the credit card nominated in this Application and the provision of authority by the credit cardholder do not in any way reduce, void or release the Customer from any unpaid monies or any surcharges or fees due in respect of the Shell Card Account in accordance with the Shell Card Terms and Conditions.
- (f) No cancellation, termination or suspension of the credit card nor change to the credit card account or exercise of any rights in connection with the credit card by the credit card holder will diminish, void, vary any duty or obligation of the Customer or any right of Viva Energy against the Customer under any term or condition of Shell Card Terms and Conditions.

## 19. SECURITY

If at any time the ability of the Customer to fulfil its obligations under these General Shell Card Terms and Conditions should, in Viva Energy's opinion, become impaired, then security satisfactory to Viva Energy shall be given by the Customer on demand.

## 20. DATA PROTECTION

- (a) Where Viva Energy receives, collects or handles Personal Information in the course of processing and administering the Customers' Shell Card, Viva Energy shall ensure that it has taken and continues to take all reasonable technical and organisational measures against unauthorised or unlawful processing or disclosure of the Personal Information.
- (b) All Personal Information collected by Viva Energy will be treated in accordance with the Privacy Act 1988 (Cth) and Viva Energy's Privacy Policy (at vivaenergy.com.au), as amended from time to time.
- (c) The Customer acknowledges that it consented to this use by Viva Energy of its Personal Information in accordance with the Viva Energy Privacy Act Declaration in the Application.

## 21. ACCOUNT ENQUIRIES

- (a) If the Customer wants to question or dispute the details of any transaction recorded on a Shell Card transaction report, tax invoice or sales docket, the Customer will advise Viva Energy
- (b) in writing within 30 days of receiving the transaction report, tax invoice or sales docket and will produce to Viva Energy on request a copy of the relevant transaction report, tax invoice or sales docket in respect of the transaction.
- (c) Subject to law, Viva Energy will not be required to consider any question or dispute on the Customer's account notified more than 30 days after the date of the Customer's relevant Shell Card transaction report, tax invoice or sales docket.
- (d) In the event of a pricing dispute relating to Products purchased and processed manually, the copy of the sales docket retained by Viva Energy will be prima facie evidence of the transaction.
- (e) In the event of a pricing dispute relating to Products purchased and processed electronically, the details of the sales docket will be prima facie evidence of the transaction. The Customer must pay the amount shown on the tax invoice in full pending resolution of a dispute. Any adjustments consequent upon settlement of such disputes shall be made within 30 days following the settlement.

## 22. CHANGE IN GENERAL SHELL CARD TERMS AND CONDITIONS

Viva Energy has the right to vary, delete or supplement these General Shell Card Terms and Conditions (or any other term contained in written correspondence from Viva Energy), including but not restricted to the amount of any charges referred to in clause 16, by written notice. Any change takes effect from the earlier of:

- (a) the first use of an Customer's Shell Card after notice is deemed to be received; and
- (b) 14 days after notice is deemed to be received.

## 23. ACCOUNTHOLDER'S DETAILS

The Customer shall notify Viva Energy immediately of any change in the Customer's registered name, trading name, ownership, business entity, registered office or principal place of business and directorship. Any address nominated by the Customer or an Authorised User for delivery of a Shell Card or other communication which differs from the address stated on the Application must be confirmed by the Customer via the Shell Card Website Facility. Viva Energy may require proof of trading from such alternative address.

#### **24. NOTICES**

(a) Viva Energy may give a notice by:

- (i) delivering it personally to the Customer; or
- (ii) leaving it at, or sending it by post, facsimile or email to the Customer's address last advised to Viva Energy in writing.

Except in the case of notice by post, the notice shall be deemed given on the date it is sent by Viva Energy. Notices sent by post shall be deemed to have been received on the 3rd day after posting.

(b) In addition to giving notice to Viva Energy in any other way permitted by law, the Customer must provide notice in writing and notice will not be effective until receipt by Viva Energy at:

**Shell Card Customer Service Centre**

**GPO Box 872K MELBOURNE 3001**

**Facsimile: 1300 134 472**

**Email: shellcard-au@vivaenergy.com.au**

#### **25. TAXES**

##### **25.1 Government Charges**

Viva Energy has the right to charge the Customer's Shell Card account with Government rates, taxes or charges which now are or which in the future may be imposed or charged upon the Customer's Shell Card transactions, whether or not the Customer is primarily liable for the impost or charge.

##### **25.2 GST**

(a) Except where a Taxable Supply is expressly stated to be inclusive of GST, if a Taxable Supply is made under these General Shell Card Terms and Conditions by either the Customer or Viva Energy, the party which made the supply (the "**Supplying Party**") may in addition to the amount payable under these General Shell Card Terms and Conditions recover from the other party (the "**Receiving Party**") an additional amount on account of GST, calculated by multiplying the amount payable by the GST Rate (within the meaning of the GST Law, being 10% currently).

(b) Where a Taxable Supply is made under these General Shell Card Terms and Conditions the

Supplying Party shall issue to the Receiving Party a Tax Invoice or an Adjustment Note, as applicable, in accordance with the GST Law.

(c) If there is a change in the GST Rate, then any amount payable which is stated to be inclusive of GST shall be increased or decreased by an appropriate amount so that the Supplying Party receives the same amount (after remittance of GST) as it would have received at the GST Rate prevailing before the change.

(d) In these General Shell Card Terms and Conditions, “GST”, “GST Law”, “GST Rate”, “Taxable Supply”, “Tax Invoice” and “Adjustment Note” have the meanings given in section 195-1 of *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

## **26. WAIVER**

The failure of Viva Energy to insist upon strict performance of any of the provisions of these General Shell Card Terms and Conditions will not be deemed a waiver of any subsequent breach of or default in these General Shell Card Terms and Conditions by the Customer. No waiver is effective unless it is in writing.

## **27. ASSIGNMENT**

These General Shell Card Terms and Conditions are personal to the Customer and the Customer shall not be entitled to assign, transfer, mortgage or charge any of its rights or obligations under these General Shell Card Terms and Conditions. Viva Energy, without the Customer’s consent, may assign or transfer by novation any of its rights or obligations under these General Shell Card Terms and Conditions.

## **28. SEVERABILITY**

If any term of these General Shell Card Terms and Conditions or any part thereof is or becomes or is declared illegal, invalid or unenforceable for any reason whatsoever in any jurisdiction and such term or part is severable, it is deemed deleted from these General Shell Card Terms and Conditions in the relevant jurisdiction.

## **29. COMMISSIONS**

The Customer acknowledges that Viva Energy may give or receive commissions, volume discounts, fees and other benefits in connection with the supply of Products to the Customer.

## **30. JOINT AND SEVERAL LIABILITY**

Where the Customer consists of two or more persons, the obligations of these persons shall be joint and several.

### 31. TRUSTEE

If the Customer carries on business as a trustee, the Customer is bound by these General Shell Card Terms and Conditions both as trustee and in its own capacity.

### 32. GOVERNING LAW

These General Shell Card Terms and Conditions shall be governed by and interpreted in accordance with the laws in force in the State of Victoria, and any proceedings arising out of these General Shell Card Terms and Conditions shall be determined by a court of competent jurisdiction in that State.

## DIVISION 2 - Online Shell Card Terms and Conditions

### 1. DEFINITIONS

1.1 Except where expressly provided otherwise terms defined in the General Shell Card Account Terms and Conditions shall have the same meaning in these Online Shell Card Terms and Conditions.

1.2 "**General Shell Card Account and Conditions**" means the terms and conditions in Division 1 of Section 8 of this Application.

1.3 "**Online Shell Card Terms and Conditions**" means these terms and conditions in Division 2 of Section 8 of this Application.

### 2. SCOPE

2.1 These Online Shell Card Terms and Conditions apply to use of the Shell Card Online (**SCOL**) web programme accessible via vivaenergy.com.au, by the Customer who has agreed to be bound by these Online Shell Card Terms and Conditions by signing and returning an Application for Shell Card Online Access, by selecting the 'I accept' option in accordance with clause 13 of these Online Shell Card Terms and Conditions, or by signing an agreement for a Shell Card which incorporates these Online Shell Card Terms and Conditions.

2.2 These Online Shell Card Terms and Conditions operate in addition to the General Shell Card Terms and Conditions and any other document forming part of the contractual relationship between Viva Energy and the Customer (**Viva Energy Contract**) and any policies, disclaimers, provisions, acknowledgements or other statements which appear on SCOL which are acknowledged or agreed to by the Customer or any of its SCOL Authorised Users at any time. In the event of any inconsistency these various terms and conditions will be given the following order of precedence:

- (a) Viva Energy Contract;
- (b) these Online Shell Card Terms and Conditions; and
- (c) any policies, disclaimers, provisions, acknowledgements or other statements which appear on

SCOL and which are acknowledged or agreed to by the Customer or any of its SCOL Authorised Users at any time.

2.3 Unless the context requires otherwise singular words include plural and vice versa, person includes a company and vice versa and all references to a clause are to a clause in these Online Shell Card Terms and Conditions. Headings are for convenience only. All references to money are to Australian currency.

### 3. VARIATION OF THESE ONLINE SHELL CARD TERMS AND CONDITIONS

Viva Energy may from time to time amend, delete or supplement these Online Shell Card Terms and Conditions. Any change takes effect from the earlier of:

- (a) 14 days after written notice is given; and
- (b) the Customer selecting the 'I accept' option if notification of a change is given when accessing SCOL.

### 4. OPERATION AND OWNERSHIP OF SHELL CARD ONLINE

4.1 The Customer acknowledges that SCOL may be operated for Viva Energy by a third party as a subcontractor and that the computer systems on which SCOL and the underlying databases are stored may be located overseas.

4.2 The Customer agrees and acknowledges that SCOL and the copyright in all materials on SCOL, including but not limited to all text, information, graphics, animation, images, software and any other materials on SCOL (**Content**) and the arrangement of this Content are owned by or licensed to Viva Energy. The trade marks on SCOL and any other names, images and logos identifying Shell and its products and services (**Trade Marks**) are proprietary Trade Marks of an affiliate of Royal Dutch Shell plc. The names and logos of other companies and products mentioned on SCOL may be the Trade Marks of third parties, and are used by Viva Energy with the permission of their respective owners.

4.3 The Customer acknowledges that Viva Energy may change the format and content of the SCOL site at any time, or suspend the operation of SCOL for support or maintenance work or for any other reason, at any time without liability for any such change or suspension.

### 5. SCOL AUTHORISED USERS

5.1 During the registration process, the Customer may apply for access rights for 1 or more authorised users to SCOL (**SCOL Authorised Users**) so the SCOL Authorised Users can access SCOL to receive report information regarding the Customer's Shell Card account, maintain the Shell Cards issued to the Customer (for example, by ordering, cancelling or limiting the use of Shell Cards) and/or to create and receive alert reports regarding the Customer's Viva Energy Shell Card account, each where

available.

5.2 The Customer can apply to Viva Energy to vary its SCOL Authorised Users or to add additional SCOL Authorised Users from time to time by completing and returning the appropriate form to Viva Energy.

5.3 Viva Energy has sole discretion to set the number of SCOL Authorised Users of the Customer and may reject any application from the Customer for an SCOL Authorised User to be given access to SCOL.

5.4 The Customer must ensure that the SCOL Authorised Users are aware of and comply with these Online Shell Card Terms and Conditions and, without limiting the other provisions of these Online Shell Card Terms and Conditions, the Customer is responsible for all acts and omissions of the SCOL Authorised Users.

## **6. LOGIN ID AND PASSWORD**

6.1 Viva Energy will issue the Customer with a login ID and Password for each of its SCOL Authorised Users to enable the SCOL Authorised Users to access SCOL to the extent requested by the Customer. Viva Energy may, at its discretion, provide the SCOL Authorised Users with the ability to set their own login ID and Password within SCOL. Viva Energy reserves the right to change or to request the Customer to change the Customer's or SCOL Authorised Users' login ID or Password at any time.

6.2 The Customer must take all reasonable steps to protect the confidentiality of each login ID and Password. The Customer may not permit, and must ensure that the SCOL Authorised Users do not permit, any other person to access SCOL using the Customer's or a SCOL Authorised User's login ID or Password.

6.3 In the event of any unauthorised use of the Customer's login ID and Password or any other breach of security of which the Customer becomes aware, the Customer must immediately notify Viva Energy of such unauthorised use or breach of security. The Customer will be liable for all activities carried out on the site, and any charges incurred as a result of those activities, before Viva Energy receives notification of such unauthorised use or breach of security.

6.4 Viva Energy may at any time cancel or suspend any login ID or Password issued to the Customer or a SCOL Authorised User if it suspects that there has been a breach of confidentiality or security or any unauthorised use of the login ID and Password.

## **7. RELIANCE ON LOGIN ID AND PASSWORD**

Viva Energy may act on any instructions transmitted or electronically communicated to it by, in connection with or arising from, whether directly or indirectly, the use, whether authorised or not, of a login ID or Password issued to the Customer or a SCOL Authorised User. The Customer accepts full

responsibility for all transactions thus made.

## 8. USE OF SHELL CARD ONLINE

8.1 As long as the Customer complies with these Online Shell Card Terms and Conditions, Viva Energy grants to the Customer a non-exclusive, non-transferable, limited right to enter, use and display SCOL. The Customer may download any Content on SCOL for which express permission has been given (e.g. online reports and statements) solely to the Customer's or its SCOL Authorised Users' computers for the Customer's use. The Customer undertakes that it will not:

- (a) alter or remove any copyright, trade mark or other proprietary notice of Viva Energy or of any other company operating SCOL;
- (b) modify, frame or edit the Content of SCOL or publish or sell the Content including but not limited to making the Content available on any other website;
- (c) reverse, engineer, translate, adapt or modify any software used in connection with SCOL;
- (d) create any links from any other website to SCOL without Viva Energy's express prior written permission;
- (e) use any Content copied from SCOL for any business, commercial or public purpose (other than as specifically authorised in these Online Shell Card Terms and Conditions); or
- (f) interrupt, interfere or attempt to interrupt or interfere with the operation of SCOL in any way.

8.2 The Customer uses SCOL site entirely at its own risk. Viva Energy reserves the right to deny the Customer or a SCOL Authorised User access to SCOL at any time or to terminate SCOL or any part thereof. Further, Viva Energy reserves the right to determine the frequency, the limits of transactions, the operating hours, the types of operations, facilities and services available through SCOL at any time.

8.3 The Customer may not do anything to interfere or attempt to interfere with the proper working of SCOL or the operation of networks connected to SCOL.

8.4 The Customer may not copy, extract or download, or do anything else which infringes the copyright or other intellectual property rights of Viva Energy or any other person in, any information displayed on SCOL from time to time.

## 9. STATUS OF INFORMATION

9.1 Viva Energy and the Customer agree and acknowledge that any billing information, reports or other information posted in SCOL or generated by SCOL and provided to the Customer are subsidiary to physical sources of information such as delivery dockets, paper receipts and invoices rendered by post and that in the event of any discrepancy the physical sources of information shall be deemed accurate and will prevail.



9.2 Viva Energy and the Customer agree that the transaction log kept by Viva Energy or on its behalf and made available within SCOL constitutes prima facie evidence that SCOL has been used to effect the matters stated in the transaction log against the Customer's account.

9.3 The Customer will regularly inspect the transaction log to monitor all transactions made using SCOL in respect of the Customer's account and the Customer must immediately notify Viva Energy of any suspected unauthorised transactions.

## **10. PRIVACY AND DATA PROTECTION**

10.1 The Customer acknowledges that it has read and understood the Viva Energy Privacy Policy available at [vivaenergy.com.au](http://vivaenergy.com.au) (Privacy Policy).

10.2 Viva Energy will comply with the Privacy Policy (as amended from time to time).

10.3 The Customer acknowledges that it consented to use of its information in accordance with the Privacy Policy (as amended from time to time) and clauses 15 - 19 when completing the application for SCOL Access and the Customer warrants that each SCOL Authorised User has consented to the use of their personal information in accordance with the Privacy Policy (as amended from time to time) and clauses 15 - 19.

## **11. VIVA ENERGY CONTRACT**

Notwithstanding any requirement in the Viva Energy Contract, Viva Energy and the Customer agree and acknowledge that the Customer may, where such services are available:

- (a) suspend or terminate any Shell Card issued to the Customer;
- (b) notify Viva Energy of the loss of any Shell Card issued to the Customer;
- (c) request the issuing of additional or replacement Shell Cards (where permitted under the Shell Card Contract); and
- (d) modify any Shell Card authorities, including the agreed products and services which can be purchased using a Shell Card under the Shell Card Contract by a Shell Card Authorised User, using the mechanism contained within Shell Card Online.

## **12. WARRANTIES, LIABILITIES AND INDEMNITIES**

12.1 Where the law applies guarantees, warranties or conditions into the provision of access to the SCOL site or the services contained therein by Viva Energy and Viva Energy is not permitted by law to exclude them, then those guarantees, warranties or conditions will apply. All other guarantees, warranties or conditions are excluded, including, without limitation:

- (a) that the SCOL site or the services contained therein will be available, uninterrupted, or timely; and
- (b) that the SCOL site or the services contained therein will be secure, error free or virus free.

12.2 Where guarantees, warranties or conditions apply, Viva Energy's liability for breach of those guarantees, warranties or conditions is limited to resupplying the services (or paying the costs thereof), where this is permitted by law.

12.3 To the extent permitted by law, Viva Energy shall have no liability under or in connection with these Online Shell Card Terms and Conditions, whether for breach of these Online Shell Card Terms and Conditions, negligence or any other tort, breach of statutory duty or otherwise, for any:

- (a) loss of profits, income, revenue, contracts or production;
- (b) business interruption or increased costs in operation;
- (c) damage to goodwill or reputation;
- (d) damage to equipment or machinery; or
- (e) indirect losses or expenses or consequential damages whatsoever, even if such loss, expense or damage may reasonably be supposed to have been in the contemplation of both parties as a probable result of the relevant default, whether suffered by the Customer or any third party.

12.4 The Customer acknowledges that:

- (a) Viva Energy may send items of software, code or programming (Cookies) to, and store Cookies on, the Customer's and the SCOL Authorised Users' computer systems in the course of the Customer and the SCOL Authorised Users accessing SCOL;
- (b) a virus or other malicious code may be transmitted to the Customer's and the SCOL Authorised Users' computer systems in the course of accessing SCOL; and
- (c) Viva Energy cannot guarantee the security of SCOL and a third person may intercept any messages or information that are sent to or from SCOL, and the Customer releases Viva Energy from and indemnifies Viva Energy against liability for any damage caused by Cookies, viruses or malicious code transmitted to the Customer's or its SCOL Authorised Users' computer systems or any unauthorised access to the Customer's information (whether occurring during access to SCOL by the Customer or a SCOL Authorised User or at any other time).

### **13. ACCEPTANCE OF ONLINE SHELL CARD TERMS AND CONDITIONS**

13.1 In addition to signing the Application, by selecting the 'I accept' option at the end of these Online Shell Card Terms and Conditions the Customer and each SCOL Authorised User agrees that, when using the SCOL site, the Customer/SCOL Authorised User is bound by, and will comply with, the Shell Card Terms and Conditions, as amended from time to time.

### **14. GENERAL**

14.1 The Customer may discontinue its use of SCOL at any time by using the mechanism provided in

the SCOL web programme or by notifying Viva Energy. SCOL Access for the Customer will terminate when the Customer's login IDs and Passwords are invalidated by Viva Energy or 2 Business Days have elapsed from the date the Customer uses the mechanism in the SCOL website programme or notifies Viva Energy of the Customer's discontinuance of its use of SCOL, whichever is earlier.

14.2 Viva Energy may terminate or suspend the Customer's access to all or part of SCOL, without notice, for any conduct that is in violation of these Online Shell Card Terms and Conditions or any applicable law or is harmful to Viva Energy's interests or the interests of another user or any other person. Viva Energy may also terminate the Customer's access to SCOL if it ceases to have a Viva Energy Contract with Viva Energy.

14.3 The failure of Viva Energy to insist upon strict performance of any of the provisions of these Online Shell Card Terms and Conditions will not be deemed a waiver of any subsequent breach of or default in these Online Shell Card Terms and Conditions by the Customer.

14.4 If any term of these Online Shell Card Terms and Conditions or any part thereof is or becomes or is declared illegal, invalid or unenforceable for any reason whatsoever in any jurisdiction and such term or part is severable, it is deemed deleted from these Online Shell Card Terms and Conditions in the relevant jurisdiction.

14.5 These Online Shell Card Terms and Conditions are (subject to any express provisions in a Viva Energy Contract to the contrary) governed by the law in force in the State of Victoria and any proceedings arising out of these Online Shell Card Terms and Conditions shall be determined by a court of competent jurisdiction in that State.

## **15. INTERNET PRIVACY INFORMATION**

During your visits to internet sites that are operated by Viva Energy Australia Ltd ABN 46 004 610 459 and affiliates ("Viva Energy"), you may be asked to provide Viva Energy with personal information. All personal information collected via Viva Energy internet sites will be treated in accordance with the Viva Energy Privacy Policy (as amended from time to time).

## **16. USE OF COOKIES**

Viva Energy may use Cookies (pieces of programming) in accordance with the Cookies Policy contained in the Viva Energy Privacy Policy (as amended from time to time).

## **17. STORAGE AND PROTECTION OF YOUR PERSONAL INFORMATION**

Viva Energy will take all reasonable steps to ensure that all personal information held by Viva Energy is secure from any unauthorised access or disclosure. However, Viva Energy does not guarantee that personal information cannot be accessed by an Viva Energy person (e.g. a hacker) or that unauthorised

disclosures will not occur. If Viva Energy provides you with any passwords or other security devices then it is important that you keep these secret and confidential and do not allow them to be used by any other person. You should notify Viva Energy immediately if the security of these devices is breached to prevent the unauthorised disclosure of your personal information.

#### **18. THIRD-PARTY INTERNET SITES AND INFORMATION SECURITY**

Viva Energy assumes no responsibility for the information practices of third-party internet sites where a user of a Viva Energy internet site is able to access non- Viva Energy internet sites through Viva Energy's. You are encouraged to review each internet site's privacy policy before disclosing any personal information.

#### **19. CONTACT US**

If you have any questions regarding the Viva Energy Privacy Policy or clauses 15 - 19, or if you would like more information regarding the way Viva Energy manages personal information, then please contact Viva Energy:

**Via email: [Tellvivaenergy-Au@vivaenergy.com.au](mailto:Tellvivaenergy-Au@vivaenergy.com.au)**

**In writing: Viva Energy Privacy Officer**

**PO Box 872K**

**Melbourne VIC 3001**

**Telephone:13 16 18**

### **DIVISION 3 – Shell Card App Terms and Conditions**

#### **1. DEFINITIONS**

1.1. Except where expressly provided otherwise terms defined in the General Shell Card Account Terms and Conditions shall have the same meaning in these Shell Card App Terms and Conditions.

**“Authorised User”** means a person authorised by the Customer to use the Customer's Shell Card App and is deemed to be an agent of the Customer.

**“General Shell Card Account and Conditions”** means the terms and conditions in Division 1 of Section 8 of this Application.

**“Online Shell Card Terms and Conditions”** means the terms and conditions in Division 2 of Section 8 of this Application.

**“Shell Card App”** means an application or ‘app’ that is capable of being used by Shell Card customers or potential customers (or their nominated representatives) on their mobile phones or tablets to purchase Products at Nominated Premises, including any updates, modifications, alterations or replacement of

such application(s) as made by or on behalf of Viva Energy from time to time in Viva Energy's sole and unfettered discretion.

**"Shell Card Terms and Conditions"** means these terms and conditions in Division 3 of Section 8 of this Application.

## **2. SHELL CARD APP**

2.1. If Viva Energy accepts the Customer's Shell Card application pursuant to the Application, Viva Energy may offer the Customer to register to use the Shell Card App to obtain Product at Nominated Premises. However, Viva Energy may elect, at any time in its absolute discretion, not to offer the Shell Card App to a Customer.

## **3. SHELL CARD APP AUTHORISED USERS**

3.1. During the registration process, the Customer may apply for access rights for 1 or more Authorised Users to use the Shell Card App.

3.2. The Customer can apply to Viva Energy to vary its Shell Card App Authorised Users or to add additional Shell Card App Authorised Users from time to time by completing and returning the appropriate form to Viva Energy.

3.3. Viva Energy has sole discretion to set the number of Shell Card App Authorised Users of the Customer and may reject any application from the Customer for a Shell Card App Authorised User to be given access to the Shell Card App.

3.4. The Customer must ensure that the Shell Card App Authorised Users are aware of and comply with these Shell Card App Terms and Conditions and, without limiting the other provisions of these Shell Card App Terms and Conditions, the Customer is responsible for all acts and omissions of the Shell Card App Authorised Users.

## **4. ACCOUNTHOLDER'S PURCHASES**

4.1. When using the Shell Card App the Customer is deemed to purchase the Products from Viva Energy.

4.2. Property in Motor Fuels, Shell LPG and Non-Shell LPG purchased on the Shell Card App will pass to the Customer immediately prior to the product passing into the storage tank of the relevant vehicle. Property in any other Product purchased on the Shell Card App will pass to the Customer upon the completion of the transaction processing the Shell Card App.

## **5. SHELL CARD APP USE**

5.1. Unless Viva Energy has received the Customer's notification in writing of loss, theft or possible unauthorised use of a Shell Card App or device which contains the Shell Card App, the Customer

authorises Viva Energy to debit the Customer's Shell Card account with every purchase of Products made by a person using the Shell Card App at the Nominated Premises to whom the Products were supplied, including where a transaction exceeds any transaction limit set by Viva Energy or the Customer.

5.2. To the extent permitted by law, Viva Energy will not be liable in respect of any loss or damage suffered by the Customer howsoever arising under or pursuant to these Shell Card App Terms and Conditions (whether by negligence or otherwise), including arising out of or associated with the supply of Products, and in respect of any liability which cannot be excluded such liability shall be discharged by Viva Energy either:

- (a) re-supplying the Product; or
- (b) supplying an equivalent Product, or paying for the costs thereof, where this is permitted by law.

5.3. Viva Energy will not be liable for a failure or delay in delivering Product or in complying with these Shell Card App Terms and Conditions, if that failure or delay is due to:

- (a) a strike or other industrial action, compliance with a government request, a shortage of supply, or any event beyond its reasonable control; or
- (b) the inability or refusal of the operator of the Nominated Premises to supply the Product requirements of the Customer for any reason.

5.4. The supply of Motor Fuels, Shell LPG or Non-Shell LPG on the Shell Card App must be into the tank of the Nominated Vehicle.

## **6. UNAUTHORISED USER**

Except as otherwise expressly stated in these Shell Card App Terms and Conditions, the Customer will be liable to Viva Energy for all Shell Card App transactions processed on the Customer's Shell Card App, including, without limitation, where, a transaction is processed in circumstances where the Authorised User is not the person using the Shell Card App. The Customer shall ensure that the Authorised User(s) complies with these Shell Card App Terms and Conditions.

## **7. EFFECTING A PURCHASE OF PRODUCTS**

7.1. Digital Sales Docket

(a) On completion of a Shell Card App transaction processed electronically at a Nominated Premises the Authorised User will receive a digital sales docket at the time of purchase, which will include:

- (i) Card number;
- (ii) Description of Product;
- (iii) Pump price of Product (if applicable);

- (iv) Quantity of Product;
- (v) Total value of Product (based on the pump price, if applicable);
- (vi) Time and date of purchase;
- (vii) Odometer reading (if applicable and where provided);
- (viii) Name of Nominated Premises; and
- (ix) The Customer acknowledges that the digital sales docket is the only confirmation of the transaction issued to the Customer or Authorised User at the point of sale. This is not a tax invoice. Viva Energy will issue a transaction report together with a tax invoice within the agreed Shell Card account Billing Period, detailing the Shell Card purchases and any applicable charges

## **8. PRICE**

Unless otherwise agreed by the parties in writing, the Customer will be charged as follows:

### **8.1. Motor Fuels and Shell LPG**

- (a) The GST inclusive price for Motor Fuels and Shell LPG is the GST inclusive pump price at the time the fuel is purchased from the Nominated Premises less any agreed discount (expressed on a GST inclusive basis).

### **8.2. Other Goods and Services**

- (a) The GST inclusive price for Other Goods and Services is the GST inclusive retail price at the time the item is purchased from the Nominated Premises.

### **8.3. Non-Shell LPG**

- (a) The GST inclusive price for Non-Shell LPG is the GST inclusive pump price at the time the Non-Shell LPG is purchased from the Nominated Premises.

## **9. CHARGES FOR USE OF SHELL CARD APP**

For purchases made on the Customer's Shell Card App, Viva Energy will debit the Customer's Shell Card account with:

- (a) the price of the Products;
- (b) fees, including but not limited to the fees in Viva Energy's list of scheduled fees and charges revised from time to time;
- (c) government taxes and charges; and
- (d) reasonable enforcement expenses incurred by Viva Energy in enforcing these Shell Card App Terms and Conditions.

## **10. SHELL CARD INVOICE AND STATEMENT**

- 10.1. Viva Energy will issue after the end of the month or other agreed period ("Billing Period"), a

transaction report of the Customer's Shell Card App account, detailing the Customer's Shell Card App purchases and any applicable charges, together with a tax invoice.

10.2. Subject to clause 17(d), the Customer will pay the amount shown on the tax invoice no later than the 21st day following the end of the Billing Period, or by such other date as agreed in writing (the "Due Date"). The Customer must pay the amount shown on the tax invoice in full without asserting any set off, counter claim or right to withhold whatsoever.

10.3. Payment will be made by means of an automatic bank debit by Viva Energy of the Customer's bank account pursuant to the terms of clause 18.

10.4. If any amounts are not paid by the Due Date, then, on notification from Viva Energy, the balance of the Customer's account (including purchases made in the current Billing Period) will become immediately payable and interest shall be payable in accordance with clause 17(e).

10.5. If any amounts are not paid by the Due Date, Viva Energy may charge the Customer simple interest on the overdue amount from the Due Date until payment, accruing daily and calculated at 5% above the AFMA 90 Days Bank Bill Swap Reference Rate: Average Mid quoted on the first Business Day of the month in which the interest accrues.

## **11. VIVA ENERGY DIRECT DEBIT ARRANGEMENT (CLIENT SERVICE AGREEMENT)**

### **11.1. Drawing Arrangements**

(a) The Customer acknowledges that by completing the bank account details and signing the Shell Card Application that moneys due to Viva Energy will be drawn from that Customer's nominated bank account. Viva Energy will initiate a drawing on or after the Due Date. If funds are not available in the Customer's nominated bank account on the Due Date, Viva Energy reserves the right to charge the Customer an unpaid direct debit fee.

(b) If the Due Date falls on a non-Business Day, Viva Energy will draw the amount on the first Business Day before the Due Date.

(c) Viva Energy reserves the right to cancel the drawing arrangements at any time and to arrange an alternate payment method with the Customer.

(a) Viva Energy will keep all information pertaining to the Customer's Direct Debit Arrangement private and confidential. . Viva Energy will make reasonable efforts to keep any such information secure and to ensure that any of its employees or agents who have access to information about Customers do not make any unauthorised use, modification, reproduction or disclosure of that information. Viva Energy will only disclose information that we have about Customers:

(i) to the extent specifically required by law; or



(ii) for the purposes of this agreement (including disclosing information in connection with any query or claim).

#### 11.2. Customer's rights

(a) Subject to clause 18.3 of the General Shell Card Terms and Conditions:

(i) the Customer may terminate the drawing arrangements at any time by giving written notice to Viva Energy. Such notice must be received by Viva Energy at least 5 Business Days prior to the Due Date;

(ii) the Customer may stop payment of a particular drawing by giving written notice to Viva Energy.

Such notice must be received by Viva Energy at least 5 Business Days prior to the Due Date;

(iii) the Customer may request changes to the frequency of drawings by contacting Viva Energy and advising of changes no less than 5 Business Days prior to the Due Date.

(b) Where the Customer considers that a drawing has been initiated incorrectly the Customer should take the matter up directly and immediately with Viva Energy so that Viva Energy can investigate. Alternatively the Customer may take it up directly with its financial institution. If Viva Energy conclude as a result of its investigations that a Customer's account has been incorrectly debited Viva Energy will respond to the Customer's query by arranging for the Customer's financial institution to adjust the Customer's account (including interest and charges) accordingly. Viva Energy will also notify the Customer in writing of the amount by which the Customer's account has been adjusted. If Viva Energy conclude as a result of its investigations that a Customer's account has not been incorrectly debited Viva Energy will respond to the Customer's query by providing the Customer with reasons and any evidence for this finding in writing.

11.3. It is the Customer's responsibility to ensure that:

(a) it has checked with its financial institution that direct debiting is available from the Customer's account;

(b) sufficient funds are available in the nominated bank account to meet a drawing on its Due Date;

(c) the authorisation given to draw on the bank account as completed in the Shell Card Application is identical to the account signing instructions held by the financial institution where the account is based;

(d) Viva Energy is advised if the bank account is transferred or closed; and

(e) a suitable alternate payment method is arranged if the drawing arrangements are cancelled either by the Customer, the nominated bank or Viva Energy.

#### 11.4. Credit Card Drawing Arrangement

(a) If Section 6B of this Application has been completed for payment by credit card, this clause 11.4

applies.

(b) If a credit card section is completed and submitted to Viva Energy with respect of the Customer's Shell Card Account, payment of the Customer's Shell Card tax invoice will be made by auto direct debit against the nominated credit card from the date that the completed credit card section is processed by Viva Energy, or, if so notified in writing by Viva Energy to the credit card holder, with respect to the Customer's next Shell Card tax invoice; and credit card holder, with respect to the Customer's next Shell Card tax invoice.

(c) The Customer acknowledges that by signing the Credit Card Authority Form:

(i) monies due to Viva Energy will, subject to any notice to the contrary from Viva Energy, be drawn from the Shell Card Customer's nominated credit card account;

(ii) a surcharge of 0.8% ex GST per invoice (which is subject to change by Viva Energy with 30 days' notice) will apply to each application of the direct debit credit card drawing arrangement (for the avoidance of doubt, if the direct debit credit card drawing arrangement is applied to a Shell Card tax invoice which has not included the surcharge, the surcharge with respect to that invoice is not waived and will be payable in addition to any new direct debit credit card surcharge in the next Shell Card tax invoice); and

(iii) clauses 18.1 - 18.3 of the General Shell Card Terms and Conditions will apply to credit card drawing as if references to "bank account" was replaced with the nominated credit card account.

(d) Viva Energy will only initiate drawing against the credit card when a payment is due from the Customer.

(e) Viva Energy will not change the amount or frequency of the drawings arrangement without the Customer's prior approval unless expressly permitted by the Shell Card Terms and Conditions.

(f) Viva Energy's drawing from the credit card nominated in this Application and the provision of authority by the credit cardholder do not in any way reduce, void or release the Customer from any unpaid monies or any surcharges or fees due in respect of the Shell Card Account in accordance with the Shell Card Terms and Conditions.

(g) No cancellation, termination or suspension of the credit card nor change to the credit card account or exercise of any rights in connection with the credit card by the credit card holder will diminish, void, vary any duty or obligation of the Customer or any right of Viva Energy against the Customer under any term or condition of Shell Card Terms and Conditions.

## **12. DATA PROTECTION**

12.1. Where Viva Energy receives, collects or handles Personal Information in the course of processing

and administering the Shell Card App, Viva Energy shall ensure that it has taken and continues to take all reasonable technical and organisational measures against unauthorised or unlawful processing or disclosure of the Personal Information.

12.2. All Personal Information collected by Viva Energy will be treated in accordance with the Privacy Act 1988 (Cth) and Viva Energy's Privacy Policy (at vivaenergy.com.au), as amended from time to time.

12.3. The Customer acknowledges that it consented to this use by Viva Energy of its Personal Information in accordance with the Viva Energy Privacy Act Declaration in the Application.

### **13. CHANGE IN SHELL CARD APP TERMS AND CONDITIONS**

13.1. Viva Energy has the right to vary, delete or supplement these Shell Card App Terms and Conditions (or any other term contained in written correspondence from Viva Energy), including but not restricted to the amount of any charges referred to in clause 9, by written notice. Any change takes effect from the earlier of:

- (a) the first use of a Customer's Shell Card App after notice is deemed to be received; and
- (b) 14 days after notice is deemed to be received.

## **2. Privacy Act Declaration and Acceptance of Terms and Conditions**

September 2019

### **DIVISION 1 - Privacy Act Declaration**

By applying to Viva Energy Australia Pty Ltd (**'Viva Energy'**) for a Viva Energy account or to act as guarantor in relation to a Viva Energy account, the Customer/Guarantor, as applicable (**'we'**) will be providing personal information to Viva Energy. We acknowledge that this personal information, and any other personal information Viva Energy collects, or has collected about us (**'personal information'**) will be used by Viva Energy to enable it to assess our application for a Viva Energy account or to act as guarantor in relation to a Viva Energy account, and if the application is approved, for the subsequent administration of the Viva Energy account. We consent to Viva Energy using and disclosing our personal information for this purpose and acknowledge that without this information Viva Energy may be unable to process or accept the application or administer the Viva Energy account. We consent to Viva Energy (and any of its Australian and overseas related bodies corporate and associated entities) using or disclosing our personal information for each of the following additional purposes:

- (a) performing administrative tasks and managing business operations;
- (b) unless we advise otherwise, telling us about products or services of Viva Energy and other organisations;

- (c) product development and research; and
- (d) risk assessment, management and modelling.

We understand that Viva Energy may exchange our personal information (including credit information) with credit reporting bodies (**CRBs**) and credit providers, and organisations providing processing and other support functions to credit providers.

In particular, we consent to Viva Energy obtaining a consumer credit report in relation to commercial credit being applied for by the Customer, and in relation to the guarantee that is proposed to be given by the Guarantor in support of that credit.

The CRB with which Viva Energy may exchange our personal information (including credit information) is Illion, formerly Dun & Bradstreet. Illion's credit reporting policy is set out at

[www.illion.com.au/legal/illion-credit-reporting-policy-australia](http://www.illion.com.au/legal/illion-credit-reporting-policy-australia) , Phone: 1300 734 806,

Email: pac.austral@illion.com.au.

We may obtain a copy of the CRB's privacy policy at the website above or by contacting the CRB using the details provided. Our credit information may be used by CRBs to include in reports provided to credit providers (such as Viva Energy) to assist them to access our credit-worthiness. If we fail to meet our payment obligations in relation to consumer credit or commit a serious credit infringement, Viva Energy may be entitled to disclose this to a CRB. We have the right to request a CRB not to use our credit reporting information for the purposes of pre-screening of direct marketing by a credit provider. We also have the right to request a CRB not to use or disclose credit reporting information about us, if we believe on reasonable grounds that we have been, or are likely to be, a victim of fraud.

We further understand that Viva Energy may disclose our personal information, to:

- (a) its related bodies corporate and associated entities;
  - (b) other organisations that have the right to use Viva Energy trademarks;
  - (c) service providers (including delivery companies, mail houses and debt collectors);
  - (d) any programme managers, bonus partners and rewards suppliers involved in any loyalty program associated with Viva Energy;
  - (e) other organisations to which Viva Energy is required by law, or authorised by us, to disclose our personal information;
  - (f) potential purchasers and their advisers (in the event of a sale or other disposal of Viva Energy or part of its business); and
  - (g) government and regulatory authorities, and other parties where required or authorised by law.
- and subject to the Privacy Act 1988, we consent to the disclosure, use and transfer of our personal

information (including credit information) between these organisations, which may be overseas, but only for use in connection with any of the purposes that Viva Energy is authorised to use our personal information. Subject to the Privacy Act 1988, we acknowledge that we may request to access our personal information collected and held by Viva Energy (and its related bodies corporate and associated entities) by contacting:

**By email: [tellvivaenergy-au@vivaenergy.com.au](mailto:tellvivaenergy-au@vivaenergy.com.au)**

**In writing: Viva Energy Privacy Officer**

**GPO Box 872, Melbourne Vic 3001**

**Telephone: 13 16 18**

We acknowledge that we can opt out of receiving promotional or advising material at any time by contacting Viva Energy on the details above.

We authorise Viva Energy to make any enquiries (including obtaining a credit report) concerning our credit worthiness or as to the accuracy of the information provided in this application. We consent to any credit report concerning us being made available to Viva Energy for the purposes of assessing this application for a Viva Energy account. We authorise Viva Energy to use that report or any information derived from that report in assessing this application and for any purposes permitted under the Privacy Act 1988. Further, we authorise Viva Energy to disclose and receive personal information to and from a credit reporting body, and make such additional checks that Viva Energy deems necessary, for the continued assessment of our creditworthiness.

All personal information collected by Viva Energy will be treated in accordance with the Privacy Act 1988 (Cth). Information on how to access and correct personal information (including credit information) or make a complaint about breaches of the Australian Privacy Principles, Part IIIA of the Privacy Act 1988 or Privacy (Credit Reporting) Code 2014 and how we will deal with such a complaint can be found in Viva Energy's Privacy Policy (at [vivaenergy.com.au](http://vivaenergy.com.au)), as amended from time to time.

## **DIVISION 2 - Acceptance of Terms and Conditions**

By signing this Application, we have read, understood and agree to be bound by the Non-Shell Card Account Terms and Conditions (Section 7) and/or Shell Card Terms and Conditions (Section 8) (as applicable) contained in this Application pack, as amended from time to time, and acknowledge having read, understood and agreed to the above Privacy Declaration including the uses and disclosures of personal information about us. We warrant that the information given in this Application is true and correct, and that we have the authority to sign this Application for and on behalf of the entity described in Account Details. We declare that the credit provided to us by Viva Energy Australia is to be applied

wholly or predominantly for business or investment purposes (or for both purposes). Importantly, we acknowledge that by signing this Application, we may lose protection under the National Credit Code. We warrant that the entity is solvent and is able to pay its debts as and when they fall due. Where this Application is signed by more than one person, each of us is bound by it separately and we are also bound jointly. If we carry on business as a trustee, we warrant that at all times: (a) the Trust subsists and is properly constituted; (b) we have full power as trustee(s) to assume and perform the obligations in connection with the Viva Energy account; and (c) we have a right to be indemnified in full out of the assets of the Trust.

### **3. Credit Card Authority**

I understand and acknowledge that this Direct Debit arrangement is governed by the terms of the Shell Card Terms and Conditions and that paying by Credit Card will attract a surcharge of 0.8% plus GST per invoice, which is subject to change with 30 days' notice by Viva Energy. I, the credit cardholder: (a) acknowledge that I have read and understood the Shell Card Terms and Conditions; and (b) agree to my credit card being subject to the drawing arrangements as set out in the Shell Card Terms and Conditions. As the credit cardholder, you retain your rights under the terms and conditions between you and your credit card provider.

### **4. Credit Limit**

The credit limit may be reduced or withdrawn by Viva Energy in its sole discretion at any time and without prior notification to the accountholder. The accountholder's credit limit does not in any way limit its liability under or in connection with the Shell Card account and (without limitation) the accountholder is liable for all Shell Card transactions which may exceed its credit limit.