

Specific Marine Terms and Conditions

Operation of these Specific Marine Terms and Conditions

These specific marine terms and conditions (**Marine Terms**) together with, either:

- The Product Supply Contract made between the Customer and Viva Energy; or
- Viva Energy General Terms and Conditions of Product Supply (**GTC's**) (as published on Viva Energy's website at <http://www.vivaenergy.com.au/quick-links/customer-terms-and-conditions>)

apply in respect of the supply of marine fuel or other Products by Viva Energy to the Customer where delivery is to be made to Vessel tankage, container or bladder, over water or Delivery Port and set out all of the agreed terms and conditions in respect of such supply to Vessels, over water or Delivery Port.

In the event of any conflict or inconsistency between the Marine Terms and the GTCs or the Product Supply Contract the provisions of these Marine Terms shall prevail to the extent of such conflict or inconsistency unless expressly agreed otherwise by the parties.

1. Definitions

In these Marine Terms, unless the context otherwise requires words defined in the GTCs or the Product Supply Contract (as applicable), have the same meaning in these Marine Terms and the below additional terms have the following meanings:

Words	Meaning
Bunkering Confirmation	has the meaning given to that term in clause 2.7.
Customer's Equipment	means the Customer's equipment at the Delivery Port or used for the delivery of the Products.
Commitment	means a Bunkering Confirmation issued by Viva Energy in accordance with clause 2.7 in response to the Customer's Nomination which shall be governed by these Marine Terms and the Product Supply Contract entered by Viva Energy and the Customer.
Delivery Port	means the port or place at which Products are delivered under a Commitment
Fixed Price Term Deal	means any Commitment with a fixed term, fixed volumes and a fixed price
Floating Price Term Deal	means any Commitment with a fixed term, fixed volumes and a floating formulated price
GTCs	means Viva Energy's General Terms and Conditions of Product Supply as published on Viva Energy's website at http://www.vivaenergy.com.au/quick-links/customer-terms-and-conditions as updated from time to time, which govern the supply of Products by Viva Energy to the Customer unless Viva Energy and the Customer have signed a Product Supply Contract or other separate agreement for supply of Products in which case the Products Supply Contract or other separate agreement applies instead of the GTCs.
Nomination	has the meaning given to that term in clause 2.3.
Pollution Event	means any occurrence or event, which results in release, escape or spill of Product onto or into land, water or the environment.
Pre-delivery Checklist	means the checklist prepared by Viva Energy and signed by or on behalf of Viva Energy, and the Customer to check the readiness of the Vessel, Delivery Port and other matters to receive Products in accordance with these Marine Terms.

Words	Meaning
Product Supply Contract	means the agreement for supply of Products over an agreed term made between the Customer and Viva Energy which incorporates these Marine Terms and which may be based on: <ul style="list-style-type: none"> • a Floating Price Term Deal; or • a Fixed Price Term Deal
Vessel	means the vessel set out in the Customer's Nomination and Viva Energy's Bunkering Confirmation to receive Products in accordance with these Marine Terms and the Product Supply Contract or GTCs (as applicable).

2. Nominations procedure

- 2.1. The nominations procedure set out in this clause 2 must be followed by the Customer whenever the Customer requires delivery of Products to a Vessel.

Customer to provide Nomination

- 2.2. No later than:

- (a) seven (7) days prior to the ETA (as defined 2.2(b)(viii)); unless
- (b) another period is set out in the Key Details or has been agreed in writing by Viva Energy and the Customer, in which case that period shall apply,

the Customer or its agent must give Viva Energy or its designated representative notice of a requirement by a vessel for delivery of Products specifying:

- (i) grades;
- (ii) quantities;
- (iii) method of delivery required;
- (iv) evidence of the vessel's duty status;
- (v) vessel name and IMO number;
- (vi) name and contact details of the vessel's agents if applicable and/or vessels Master;
- (vii) the Delivery Port;
- (viii) expected date of arrival of the vessel at the Delivery Port (**ETA**) and expected date of departure of the vessel at the Delivery Port (**EDA**).

- 2.3. Notices given under clause 2.2 must be in writing and submitted to Viva Energy in accordance with the Ordering Process set out in the Key Details or as otherwise agreed in writing between the parties.

- 2.4. A notice complying with clause 2.2 and clause 2.3 constitute "a Nomination."

- 2.5. In providing a Nomination, the Customer must also notify Viva Energy of any specific requirements in respect of the Vessel and/or the Delivery Port, which may be relevant to or affect Viva Energy's delivery of the Products.

- 2.6. Where Viva Energy notifies the Customer that a Nomination includes a grade of lubricants that Viva Energy is unable to supply from duty-free stocks, the Customer may revise their Nomination for a different grade of lubricants. If the Customer does not promptly revise the Nomination following Viva Energy's notification, the Customer shall be deemed to have requested to be supplied the grades in question from duty paid stocks and clause 3.6(l)(IV) below shall apply.

Viva Energy's confirmation of Customer's Nomination

- 2.7. Viva Energy may by written notice to the Customer accept the Customer's Nomination (Bunkering Confirmation). Viva Energy shall use reasonable endeavours to send a Bunkering Confirmation to the Customer within the following Period for Confirmation (as applicable):

- (a) forty-eight (48) hours of receipt of the Customer's Nomination; unless
- (b) another period is specified in the Key Details or agreed in writing between the parties, in which case that period will apply.

Specific Marine Terms and Conditions

- 2.8. Upon the issue of Viva Energy's Bunkering Confirmation, the Customer's Vessel and the Nomination shall be treated as if specified in the Agreement and these Marine Terms together with the, Nomination, the Bunkering Confirmation and the Contract Documents forming the Agreement (as applicable) constitute the full agreement between the parties with respect to the supply of Products as specified in the Nomination (Commitment).
- 2.9. No Commitment will be deemed to be made unless and until Viva Energy has issued a Bunkering Confirmation within the Period for Confirmation set out in clause 2.7.
- 2.10. Notwithstanding clause 2.9, the parties agree that a Commitment will be deemed to be made where a Vessel is supplied with Products at a Delivery Port on the authority of the Master of the Vessel.

3. Delivery

Delivery procedures and requirements

- 3.1. Subject to the regulations and requirements of the Delivery Port, the Products shall be delivered to the Vessel at the Delivery Port stated in the Customer's Nomination and Viva Energy's Bunkering Confirmation and in accordance with reasonable instructions given by the Customer, its accredited representative or the Master of the Vessel as agreed by Viva Energy before commencement of delivery.
- 3.2. Where the Products are Marine Fuels, the Marine Fuels shall be delivered by pipeline, road tanker or bunker barge (including bunker vessels) in accordance with the Customer's Nomination and Viva Energy's Bunkering Confirmation and the following shall apply (as relevant):
 - (a) for pipeline - delivery of the Marine Fuels shall take place upon the Customer receiving the Marine Fuels on board its vessel alongside the terminal/berth from Viva Energy's pipeline facility.
 - (b) for road tanker / truck – delivery of the Marine Fuels shall take place upon the Customer receiving Marine Fuels on board its Vessel alongside the terminal/berth from Viva Energy's road tanker.
 - (c) for bunker barge: delivery of the Marine Fuels shall take place upon the Customer receiving Marine Fuels on board its vessel from Viva Energy's bunker barge (which shall include bunker vessels).

Supply to Vessels before the ETA or after the ETA

- 3.3. If the Vessel arrives earlier than the ETA, Viva Energy shall use reasonable endeavors to supply the Vessel earlier than the ETA upon request of the Customer, but in doing so Viva Energy shall
 - (a) only be obliged to take steps which are commercially reasonable having regard to Viva Energy's circumstances at the time; and
 - (b) not be regarded as obliged to ensure delivery before the ETA by incurring additional expenditure or otherwise.
- 3.4. If the Vessel has not arrived at the Delivery Port within ten days after the ETA (or such other period as may be notified by Viva Energy to the Customer in the Bunkering Confirmation):
 - (a) Viva Energy may at any time notify the Customer that it considers the Nomination as cancelled by the Customer; and
 - (b) the Customer shall (in addition to any other liability under this Agreement), be liable to reimburse Viva Energy for all expenses incurred by Viva Energy as a result of the Nomination and cancellation of the Nomination.

Customer's warranties

- 3.5. The Customer warrants that:
 - (a) it shall have all permits required to comply with all relevant regulations relating to delivery of Marine Fuels at the port or place of delivery.
 - (b) the Vessel can safely receive Marine Fuels and has all certificates required to comply with all relevant regulations relating to delivery of the Marine Fuels at the Delivery Port or the Nominated Site.

Customer acknowledgements

Specific Marine Terms and Conditions

3.6. The Customer acknowledges and agrees that, unless expressly stated otherwise in Viva Energy's Bunkering Confirmation:

- (a) **(public holiday delivery)** Viva Energy is not:
 - (i) obliged to deliver; and
 - (ii) liable for any inability to deliver, on public / dock holidays at the Delivery Port.
- (b) **(normal working hours delivery)** Viva Energy will only deliver during normal working hours;
- (c) **(compliance with export laws)** Viva Energy shall not be required to load Products onto Vessels or deliver Products into any of the Vessel's tanks which require a Government permit and would be deemed to be prohibited exports where the Customer or the Customer's accredited representative has not obtained the relevant permit (or permits). The Customer is responsible for providing Viva Energy with evidence of the Customer obtaining relevant permits prior to Products being required to be loaded onto the Vessel (to avoid doubt this includes the Customer procuring the completion by the Vessel's master, owner or agent of all required Australian Border Force ships' stores declarations pursuant to Section 129 of the Customs Act 1901 (Cth));
- (d) **(congestion)** the Vessel will be bunkered as promptly as circumstances permit, but Viva Energy shall not be liable for any loss, expense, damage, delay or demurrage whatsoever which may be suffered by the Customer as a result of any delay arising from congestion affecting Viva Energy's facilities, howsoever caused;
- (e) **(delivery to Vessel tanks)** for delivery into vessels, unless otherwise agreed by Viva Energy, the Customer shall not be entitled to receive Products other than into tanks usually used as the fuel/lubricant bunkers of the Vessel to which the delivery is to be made;
- (f) **(changes to ETA or EDA or other delivery arrangements)** it is the sole responsibility of the Customer or the Customer's nominated representative to notify Viva Energy of any changes to the ETA, EDA or other matters relating to the delivery of the Products promptly including changes to quantities set out in the Bunkering Confirmation. Viva Energy shall have the right to charge the Customer for all provide additional expenses incurred by Viva Energy in connection with such changes.
- (g) **(bulk products minimum receiving rates)** for bulk Products delivered by barge, the minimum receiving rate must be:
 - (i) greater than 100MT/hour (for Gas Oil); and
 - (ii) greater than 350MT/hour (for Fuel Oil 380/180cst).

Where minimum receiving rates are not met, Viva Energy may at its option:

- (A) charge additional charges for the additional time taken in excess of the time which would have been taken had the minimum receiving rates been met; and/or
 - (B) at any time during the bunkering operation cease the bunkering operation and require the Customer to pay an amount equal to USD50/MT of the quantity of Product not delivered against the quantity ordered under the Commitment and which would have been delivered had the minimum receiving rates been met; and
 - (C) recover any other any costs incurred by Viva Energy arising from the Customer's failure to meet the minimum receiving rates.
- (h) **(cancellations)** subject to the quantities thresholds stated in 3.6(j) below, if the Customer cancels a Commitment or otherwise fails to take delivery of the Products in full or in part for any reason other than default of Viva Energy, then Viva Energy is entitled to recover and the Customer is liable to pay all costs and expenses incurred by Viva Energy arising from the cancellation or failure to take delivery including without limitation:
- (i) Viva Energy's losses arising from any resale of the Products;
 - (ii) Viva Energy's costs to return Products to storage including associate demurrage,

and the Customer acknowledge and agrees that Viva Energy may recoup such costs from the Customer by applying the following cancellation cost rates (such rates representing a fair and reasonable estimate of Viva Energy's anticipated costs):

Specific Marine Terms and Conditions

Days before ETA that notice of cancellation received by Viva Energy	Cancellation costs
More than 7 days	NIL
Less than 7 days but more than 5 days	USD40/MT
Less than 5 days but more than 3 days	USD50/MT
Less than 3 days	USD60/MT

- (i) **(additional charges)** Viva Energy may recover from the Customer (as additional charges and as an adjustment to the Price):
- (i) by Viva Energy under sub-clauses 3.6(a) to 3.6(f);
 - (ii) any expenses incurred as a result of the Master of the Vessel or site operator rejecting the whole or any part of a delivery;
 - (iii) any mooring or unmooring charges or port dues which may be incurred by Viva Energy in connection with any Vessel to which Products are delivered hereunder;
 - (iv) if Viva Energy (not having duty-free stocks available, and the Customer first having been advised that this is the case) delivers to the Customer from duty paid stocks, the amount of such duty;
 - (v) any expenses and delivery costs or charges incurred as a result of the Nominated Site, Delivery Port or the vessel being or being deemed to be unsuitable or unacceptable according to Viva Energy standard delivery procedures.
- (j) **(quantities)** unless the quantity is amended by agreement of the parties:
- (i) Viva Energy shall have the right to charge the Customer for all proven additional expenses incurred by Viva Energy in connection with the Customers' failure to take delivery of the full quantity of the Products ordered by the Customer (with an operational tolerance of +/- five (5) per cent); and
 - (ii) the Customer shall have the right to charge Viva Energy for all proven additional expenses incurred by the Customer in connection with Viva Energy's failure to deliver the full quantity of the Products agreed as per the Bunkering Confirmation (with an operational tolerance of +/- five (5) per cent).

4. Health, safety & environmental requirements

Ex-barge

4.1. Where delivery is ex-barge, the Customer must:

- (a) provide free of cost to Viva Energy a clear and safe berth for the barge(s) alongside the vessel's receiving lines and the assistance of qualified staff to secure the barge(s) moorings;
- (b) ensure the receiving Vessel provides a safe access to the barge. This safe access means the use of the accommodation ladder. If the position of the lighter does not fit with the position of the accommodation ladder a pilot ladder should be rigged up. The receiving vessel is responsible for a safe access to and from the lighter. Vessels, including tankers, will be bunkered in turn as promptly as circumstances permit but Viva Energy shall not be liable for demurrage or for any loss, expense, damage or delay due to congestion at the terminal or to prior commitments of available barges, or when in Viva Energy's opinion clear and safe berth or the assistance of qualified staff to secure moorings is unavailable.

Environmental matters

4.2. Each party shall comply (and maintain internal controls and procedures to ensure compliance) with all Laws in connection with its performance of this Agreement in accordance with all applicable laws and government regulations with respect to the environment and storage, handling, delivery, receipt and use of the Products (as applicable).

4.3. If a Pollution Event occurs during or in connection with the delivery of the Products:

Specific Marine Terms and Conditions

- (a) the Customer shall promptly take all action reasonably necessary to contain, clean-up and mitigate its effect; and
 - (b) if the Customer fails to promptly take such action Viva Energy may, at its option, take such measures it considers to be necessary or desirable in connection with the containment, clean-up and mitigation of its effects by employing its own resources or contracting with others.
- 4.4. To the extent a Pollution Event arises from the negligence of the Customer, its servants or agents (other than Viva Energy) or any defect or failure in the Customer's Equipment, the Customer indemnifies Viva Energy against all liability, costs and expenses arising from the Pollution Event including any steps taken by Viva Energy under clause 4.2.
- 4.5. The Customer shall provide reasonable assistance and co-operation to Viva Energy:
- (a) in respect of:
 - (i) the Customer's response to any Pollution Event; and/or
 - (ii) Viva Energy taking measures under clause 4.3(b); and
 - (b) by providing Viva Energy with all documentation and information concerning the Pollution Event, any program for prevention and/or control of pollution (including a Vessel's spill contingency planning) as requested by Viva Energy or required by law or regulations applicable at the Delivery Port.

Customer's Equipment and Delivery conditions

- 4.6. The Customer acknowledges and agrees that:
- (a) it is fully responsible for the proper use, maintenance and repair of the Customer's Equipment;
 - (b) it must immediately inform Viva Energy of any defects, ruptures, spills or other problems with or related to the Customer's Equipment, which may affect Viva Energy's performance of its obligations under this Agreement or which occur during the delivery process; and
 - (c) it must provide ready and safe means of access to the Customer's Equipment for delivery of the Products at the Delivery Port;
 - (d) it must not obstruct access to the Customer's Equipment for delivery; and
 - (e) Delivery will not commence unless and until the Pre-delivery Checklist has been jointly and satisfactorily completed and signed by or on behalf of both Viva Energy and the Customer.
- 4.7. The Customer acknowledges that:
- (a) it is the sole responsibility of the Customer to provide appropriate, safe and fit for purpose bunker hose connections on its Vessel; and
 - (b) Viva Energy has the right to not deliver Products to the Customer pursuant to a Commitment, if in Viva Energy's reasonable opinion such connections have not been made available, and:
 - (i) the Customer shall indemnify Viva Energy for and against all liabilities, expenses and costs incurred by Viva Energy as a result of the non-delivery including but not limited to barge charter costs, fuel pump back costs and any additional labour and/or overtime charges; and
 - (ii) Viva Energy will not be liable for any costs or losses incurred or suffered by the Customer as a result of the election by Viva Energy, pursuant to this clause 4.6, to not deliver Products to the Customer.
- 4.8. Despite any other provision in this Agreement to the contrary, Viva Energy is not obliged to deliver any Products to the Customer pursuant to a Commitment if in the reasonable opinion of Viva Energy the Delivery Port, Nominated Site or Vessel is considered by Viva Energy (acting reasonably) to be unsuitable.
- 4.9. The Customer must obtain Viva Energy's approval prior to deliveries into a Vessel's cargo hull. Such approval may only be given after Viva Energy (or its agents) has conducted an inspection to determine suitability of the Vessel in accordance with Viva Energy's prevailing ship quality assurance procedures. Viva Energy has the right not to deliver Products to the Customer pursuant to a Commitment if such approval has not been obtained.

Specific Marine Terms and Conditions

4.10. The Customer acknowledges that:

- (a) it is the sole responsibility of the Customer to ensure that the Delivery Port is suitable for road tanker deliveries and to notify Viva Energy of any special conditions applying at the Delivery Port in relation to road tanker deliveries;
- (b) Viva Energy has the right to not deliver Products pursuant to a Commitment by road tanker if Viva Energy considers (acting reasonably) that the facilities available at the Delivery Port are unsuitable for delivery by road tanker, and:
 - (i) the Customer shall indemnify Viva Energy for and against all liabilities, expenses and costs incurred by Viva Energy as a result of the non-delivery including but not limited to fuel pump back costs and any additional labour and/or overtime charges; and
 - (ii) Viva Energy will not be liable for any costs or losses incurred or suffered by the Customer as a result of the election by Viva Energy, pursuant to this clause 4.10, to not deliver Products to the Customer.

5. Risk and title

5.1. Property in and risk of the Products supplied to the Customer shall pass from Viva Energy to the Customer:

- (a) in the case of bulk Product, as the Products pass the flange connecting the delivery facilities provided by Viva Energy with the receiving facilities provided by the Customer; and
- (b) in the case of packed Product, at the time of delivery to the vessel or other delivery location (which for the avoidance of doubt in relation to Products delivered on pallets will be deemed to have occurred at the time the pallets are made ready for off-loading at the relevant location by the vehicle driver).

5.2. The responsibility for connecting the delivery facilities provided by Viva Energy to the receiving facilities provided by the Customer shall be in accordance with the requirements of the Delivery Port.

6. Measurement/quantity and samples/quality claims

6.1. The quantity of Products delivered shall be measured and calculated in accordance with the ASTM –IP Petroleum Measurement Tables or the methods of any other recognised standards authority at the discretion of Viva Energy.

6.2. For bulk Marine Fuel only, Viva Energy shall take four primary samples of each grade of bulk Marine Fuel delivered from which Viva Energy shall take two representative samples. Three of these samples are taken for quality purposes (“**quality samples**”). The fourth sample is known as the MARPOL Control Sample. One sealed quality sample and the MARPOL Control Sample shall be handed to the Master of the vessel receiving the Products and the other two quality samples retained by Viva Energy for a 30 day period or the minimum period allowable under applicable law, whichever is the longer, from the date of delivery in a safe place where they will not deteriorate. At the end of the said period the remaining quality samples may be discarded unless the Customer has made a complaint or claim within the said period, in which case one of the samples shall be retained by Viva Energy for its own use and the other sample shall be retained by Viva Energy for analysis by the expert referred to in clause 6.3 below.

6.3. Any dispute as to quantity or quality of Products delivered under a Commitment shall, save for in instances of manifest error or fraud, be determined finally and conclusively by an expert appointed jointly by the Customer and Viva Energy or, if they cannot agree to such an appointment, then an expert appointed by the President for the time being of the Institute of Petroleum in Australia.

7. Restrictions

7.1. To the extent that Marine Product is sold or to be sold to the Customer on a duty or tax-exempt basis, the Customer must comply with all local requirements and must execute all such documents necessary to permit the sale on such basis, including any declarations on use of the Product. To the extent that a claim is made by any authorities against Viva Energy on the basis that such Product was liable for duty or taxes and such claim arose partly or wholly due to the action, omission or fault of the Customer (including any use of Product in domestic waters), then the Customer shall indemnify Viva Energy

Specific Marine Terms and Conditions



against any claims, losses, costs, damages, liabilities, fines, penalties and expenses attributable to such action, omission or fault of the Customer.

- 7.2. Unless otherwise agreed the Customer represents and warrants that the marine lubricants supplied will be used solely for the lubrication requirements of the Vessel to which they are delivered or of other Vessels owned or managed by the Customer.