

About this document

This document (“**Standard Conditions for Equipment**”) sets out the terms and conditions upon which Viva Energy agrees to make fuel equipment available to the Customer including for its use to receive, store and dispense fuel or other products supplied by Viva Energy to the Customer from time to time (“**Equipment**”). Equipment may be made available through hire (or loan-out) or sale. These Standard Conditions for Equipment cover each situation.

These Standard Conditions for Equipment are intended to operate in addition to:

- the Account Application form signed by the Customer;
- where the Customer and Viva Energy have signed a separate agreement for fuel and other product supply, the terms and conditions of that fuel supply agreement (“**Fuel Supply Contract**”); and
- where the Customer purchases Products from Viva Energy, Viva Energy’s General Terms and Conditions for Products (“**GTCs**”) as published on Viva Energy’s website,

together with all documents referenced in the Fuel Supply Contract or GTCs as applicable.

Viva Energy may agree to make Equipment available to the Customer:

- at the time of entering a Fuel Supply Contract or GTCs with the Customer; or
- subsequently or separately through a separate written agreement between Viva Energy and the Customer, which refers to these Standard Conditions for Equipment.

1. Definitions

- 1.1 Words and phrases which are defined terms in the GTCs or the Fuel Supply Contract and are also used in these Standard Conditions for Equipment have the same meaning as in the GTCs or the Fuel Supply Contract as the context requires.
- 1.2 For clarity, where the Customer is purchasing non-Aviation Fuels “Viva Energy” means Viva Energy Australia Pty Ltd ABN 46 004 610 459 and where the Customer is purchasing Aviation Fuels “Viva Energy” means Viva Energy Aviation Pty Ltd ABN 29 167 761 453.

2. Delivery and installation of the Equipment

This clause 2 applies to the Customer’s hire and/or purchase of the Equipment.

Delivery

- 2.1 Unless expressly agreed otherwise by Viva Energy and the Customer in writing:
 - (a) all costs associated with the collection and delivery of the Equipment must be paid by the Customer.
 - (b) delivery of the Equipment is taken to occur:
 - (i) at the time the Customer or the Customer’s nominated carrier takes possession of the Equipment at Viva Energy’s address; or
 - (ii) if Viva Energy has agreed to deliver the Equipment to Customer’s nominated address, then delivery occurs at the time Viva Energy (or Viva Energy’s nominated carrier) delivers the Equipment to the Customer’s nominated address even if the Customer is not present at the address.
 - (c) If Viva Energy is responsible for delivery of the Equipment, Viva Energy will make reasonable effort to deliver the Equipment within an agreed timeframe, however any time or date given by Viva Energy to the Customer is an estimate only and does not constitute a condition of agreement.
- 2.2 The time for delivery of the Equipment shall reasonably extended in case of any delay arising out of any events which are beyond the reasonable control of Viva Energy including correct and timely delivery from Viva Energy’s sub-suppliers if applicable. Time for delivery shall be extended even if Viva Energy is in delay at the time of occurrence of any of the above events.
- 2.3 If dispatch or delivery is delayed for reasons attributable to the Customer or the Customer fails to provide sufficient instruction to Viva Energy for delivery of the Equipment, any reasonable costs incurred by Viva Energy such as storage, insurance, any demurrage or other incidental costs as a result of such delay

may be invoiced to the Customer to be calculated from the date of Viva Energy's notification that the Equipment is ready for dispatch or delivery.

Installation

2.4 Unless otherwise agreed by Viva Energy in writing, the Customer will carry out setup, installation and commissioning of the Equipment. If Viva Energy does provide personnel for this purpose, then the following conditions apply:

- (a) Viva Energy's personnel shall provide the installation services according to the technical documentation, drawings and descriptions provided by Viva Energy to the Customer;
- (b) The Customer shall not engage Viva Energy's personnel to perform tasks other than the tasks within the scope of the installation services agreed by Viva Energy. (The Customer acknowledges that the Customer is responsible for arranging and carrying out all necessary grounding, bonding and earthing studies and works necessary for installation of the Equipment in accordance with applicable fuel storage and electrical installation requirements.);
- (c) To the extent necessary for Viva Energy to provide the Services, the Customer must give Viva Energy, at no cost to Viva Energy, safe access to the Customer's site and safe use of such utilities, equipment and other services at the site as Viva Energy may reasonably require to execute the on-site services.
- (d) The price payable by the Customer for the installation services will be either (in order of precedence):
 - (i) as set out in the Equipment Letter (see clause 4); or
 - (ii) otherwise agreed in writing between the parties; and
 - (iii) to the extent neither (i) or (ii) applies then shall be calculated on a time and materials basis such that Viva Energy is entitled, in addition to and without duplication of other amounts payable by the Customer under these terms and conditions, to receive reimbursement by the Customer for its reasonable and direct actual costs incurred in providing the installation plus an amount for overhead, profit and administration of 10%,

in each case (exclusive of GST) payable by the Customer in accordance with the GTCs of Fuel Supply Contract as applicable.

- (e) Any waiting time not attributable to Viva Energy and any delays to Viva Energy in carrying out the Services due to reasons beyond the control of Viva Energy shall be charged by Viva Energy and payable by the Customer at reasonable stand-by rates which shall be determined in accordance with the order or precedence set out in 2.4(d)(i), 2.4(d)(ii) and 2.4(d)(iii) above.
- (f) The services will be performed with due care and skill.
- (g) Viva Energy shall use reasonable endeavours to complete the services within the agreed delivery period. However, the delivery period is subject to correct and timely delivery by Viva Energy's sub suppliers and the time for delivery shall be reasonably extended in case of any delay arising out of a Force Majeure Event or otherwise outside of the reasonable control of Viva Energy.
- (h) Where Viva Energy is performing services on the Customer's site, the Customer and Viva Energy must coordinate, cooperate and communicate with each other to ensure that both the Customer and Viva Energy can discharge their respective health and safety obligations under applicable health and safety laws in respect of undertaking the performance of the on-site services. Without limitation, the Customer shall provide Viva Energy with all information in respect of the Customer's site and the relevant policies, procedures and rules for the safety of Viva Energy's personnel while on site. Such information shall be in due time prior to Viva Energy's personnel arriving on site to ensure Viva Energy can plan the on-site services and its personnel can become sufficiently familiar with the relevant policies, procedures and rules.
- (i) To the extent that the services include the provision of advice, recommendations or other information which the Customer may rely upon ("**Advice**") then Viva Energy will use reasonable endeavours to provide accurate advice, recommendations and information but the Customer is responsible for making its own mind up whether or not to rely on or implement the Advice, and Viva Energy shall not be accountable to the Customer in relation to the Customer's reliance on the Advice unless the Advice was put in writing and Viva Energy has failed to use due care and skill

in providing the Advice.

- (j) Without prejudice to the preceding paragraphs, to the extent permitted by law Viva Energy's liability (whether on the basis of negligence or otherwise) in respect of the services provided under these terms and conditions is limited to an amount equal to the total amount price payable by the Customer for the services as determined under clause 2.4(d).

3. Exclusion of warranties and liabilities

This clause 3 applies to the Customer's hire (or loan-out) and/or purchase of the Equipment.

- 3.1 The Customer is responsible for and must satisfy itself at commencement of the hire or loan-out period that the Equipment is suitable for its purposes.

Application of Australian Consumer Law

- 3.2 Where the Australian Consumer Law applies, the Customer has the benefit of guarantees in relation to the hire (or loan-out) of the Equipment which cannot be excluded.
- 3.3 Where the Australian Consumer Law applies and the Equipment is not of a kind ordinarily acquired for domestic or household use or consumption, Viva Energy's liability in respect of any guarantee is limited to the replacement or repair of the Equipment or the cost of having the Equipment repaired or replaced.
- 3.4 To the extent that the Australian Consumer Law (or any other law which cannot be excluded) does not apply, Viva Energy makes no representations and gives no warranties other than those set out in these Standard Conditions For Equipment, and will not be liable to the Customer for any damages, costs or other liabilities whatsoever (including for consequential loss) in relation to the use or hiring of the Equipment by the Customer.

4. Hire (or loan-out) charges and payment

Hire charges

- 4.1 Where the Customer is hiring the Equipment (including by way of loan-out by Viva Energy), the hire (or loan-out) charges for the Equipment shall be as agreed in writing by Viva Energy and the Customer which may be:
 - (a) incorporated into the Fuel Supply Contract pricing; and/or
 - (b) as indicated in an Equipment quote and offer letter issued by Viva Energy to the Customer which references these Standard Conditions for Equipment ("**Equipment Letter**"),the Customer must pay the hire (or loan-out) charges as stipulated plus:
 - (c) GST, any other taxes or duties, and all tolls, fines, penalties, levies or charges payable in respect of these terms and conditions or arising from the Customer's use of the Equipment;
 - (d) all costs incurred by Viva Energy in recovering possession of the Equipment; and
 - (e) the full cost of repairing any damage to the Equipment caused or contributed to by the Customer, unless expressly agreed otherwise by the parties.
- 4.2 Hire (or loan-out) charges may be adjusted by Viva Energy in accordance with:
 - (a) the price adjustment provisions set out in the GTCs or Fuel Supply Contract (as applicable); or
 - (b) any other price adjustment process agreed between the parties in writing.

Purchase price (where the Customer is purchasing the Equipment)

- 4.3 Where the Customer is purchasing the Equipment:
 - (a) the purchase price for the Equipment shall be as agreed in writing by Viva Energy and the Customer which may be:
 - (i) incorporated into the Fuel Supply Contract pricing; and/or
 - (ii) as indicated in an Equipment quote and offer letter issued by Viva Energy to the Customer which references these Standard Conditions for Equipment ("**Equipment Letter**"),

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- (b) the Customer must pay the purchase price as stipulated plus:
 - (i) GST, any other taxes or duties, and all tolls, fines, penalties, levies or charges payable in respect of these terms and conditions or arising from the Customer's use of the Equipment;
 - (ii) all costs incurred by Viva Energy in recovering possession of the Equipment; and
 - (iii) the full cost of repairing any damage to the Equipment caused or contributed to by the Customer, unless expressly agreed otherwise by the parties.
- (c) The purchase price may be adjusted by Viva Energy in accordance with:
 - (i) the price adjustment provisions set out in the GTCs or Fuel Supply Contract (as applicable); or
 - (ii) any other price adjustment process agreed between the parties in writing.

Time for payment

- 4.4 Hire (or loan-out) charges and the purchase price (as applicable) are payable by the Customer on the agreed upon date/s set out in:
- (a) the Fuel Supply Contract or the GTCs (as applicable); or
 - (b) Viva Energy's Equipment Letter.
- 4.5 Unless agreed otherwise, payment must be made by the Customer by direct deposit or electronic/online banking in accordance with Viva Energy's instructions.

5. Customer obligations in respect of the equipment

Delivery and return

- 5.1 Where the Customer is hiring the Equipment, the Customer must:
- (a) in accordance with Viva Energy's instructions and at the Customer's own cost:
 - (i) deliver the Equipment to Viva Energy when it is due back;
 - (ii) return the Equipment to Viva Energy in good repair (except for fair wear and tear);
 - (iii) if Viva Energy has agreed to collect the Equipment, notify Viva Energy when the Equipment is available for collection;
 - (b) operate the Equipment safely, strictly in accordance with the law, only for its intended use, and in accordance with any manufacturer's instructions whether supplied by Viva Energy or displayed on the Equipment.

(Note to customer: You must notify Viva Energy if you require any further instructions on the operation and safe use of the Equipment.)

Use at own risk

- 5.2 The Customer is solely liable for all injury and/or damage to persons and property to the extent caused or contributed to by the Customer in relation to the Equipment and its operation. The Customer must have adequate insurance to cover all liabilities incurred as a result of its use and operation of the Equipment;

Operate safely and in accordance with all applicable laws

- 5.3 The Customer must ensure that:
- (a) any person collecting or taking delivery of Equipment on behalf of the Customer is authorised by the Customer to do so and the Customer will not allege that any such person is not so authorised;
 - (b) all persons operating or erecting the Equipment are suitably instructed in its safe and proper use and where necessary hold a current certificate of competency and/or are fully licensed; and
 - (c) a thorough hazard and risk assessment is conducted before using the Equipment and comply with all health and safety laws relating to the Equipment and its operation.

Cooperate with Viva Energy

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- 5.4 The Customer must:
- (a) during the Hire Period (see definition in clause 6.4) report and provide full details to Viva Energy of any accident or damage to the Equipment as soon as practicably possible and not more than two business days of the accident or damage occurring;
 - (b) must sign any documentation requested by Viva Energy at such intervals as reasonably stipulated by Viva Energy, to confirm the Customer's acceptance of these Standard Conditions for Equipment;
 - (c) assist and co-operate fully and promptly with Viva Energy and/or its insurer in the investigation, settlement or defence of any claim or matter relating to the Customer's care, custody and/or use of the Equipment;
 - (d) remain responsible for the care and safekeeping of the Equipment:
 - (i) until collected by or delivered back to Viva Energy; or
 - (ii) if Viva Energy has agreed to sell the Equipment to the Customer until sold to the Customer.
- 5.5 Viva Energy, itself or through a representative, may have the Equipment inspected at any time, and the Customer must cooperate with Viva Energy to facilitate such inspections including providing Viva Energy with safe access to the Customer's premises where the Equipment is located.

Maintenance and repair

- 5.6 During the Hire Period, the Customer will:
- (a) maintain the Equipment in accordance with the Equipment manufacturer's guidelines.
 - (b) clean the Equipment (including the removal of any hydrocarbon waste);
 - (c) pay for any and all costs associated with maintenance and repairs arising from its improper or negligent use of the Equipment, impact damage, product-related damage and missing parts.

(Note to Customer: In the event the Customer requests and Viva Energy agrees to complete urgent repairs and maintenance after normal trading hours, a call-out fee may be charged to the Customer based on Viva Energy's existing rates as notified by Viva Energy to the Customer.)

Do nots

- 5.7 During the Hire Period, the Customer must NOT:
- (a) tamper with, damage or repair the Equipment;
 - (b) lose or part with possession of the Equipment;
 - (c) rely upon any representation relating to the Equipment or its operation other than those contained in these Standard Conditions for Equipment or Viva Energy's Equipment Letter; or
 - (d) exceed the recommended or legal load and capacity limits of the Equipment.
- 5.8 Throughout the Hire Period, the Equipment shall not be moved from the Customer's nominated location, without prior written consent from Viva Energy.

6. Risk and Title

Risk

- 6.1 Risk of damage to or loss of the Equipment passes to the Customer on collection or delivery of the Equipment and the Customer must insure the Equipment for its full replacement value, on or before Delivery.
- 6.2 Without limiting clause 6.1, if any of the Equipment is damaged or destroyed during or following collection or delivery, Viva Energy is entitled to receive all insurance proceeds payable for the Equipment.
- 6.3 If the Customer requests Viva Energy to leave Equipment outside Viva Energy's premises for collection or to deliver the Equipment to an unattended location, then such Equipment shall be left at the Customer's sole risk.

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Title

- 6.4 Throughout the period of hire or loan out of the Equipment as specified in the Fuel Supply Contract or Viva Energy's Equipment Letter ("**Hire Period**"):
- (a) the Equipment remains the exclusive property of Viva Energy;
 - (b) the Customer shall not transfer, assign, convey, pledge, mortgage, lend, sub-lease, or dispose of the Equipment;
 - (c) the Customer shall not claim ownership rights over the Equipment.
- 6.5 In the event a third-party makes any claim to, on, or against the Equipment, the Customer shall immediately notify Viva Energy of the claim.
- 6.6 Viva Energy is entitled to place and maintain on the Equipment such markings as it considers appropriate for the purposes of indicating and advertising its ownership of the Equipment during the Hire Period, as well as placing any safety and operational markings such as 'safe fill level' labels and/or stickers, and the Customer will not remove or obscure any such markings in any way.

Right to purchase

- 6.7 Unless specifically agreed otherwise by Viva Energy in writing, the Customer has no obligation or any right to purchase the Equipment during or at the completion of Hire Period.
- 6.8 The Customer may make an offer to purchase the Equipment, at the end of the Hire Period, Viva Energy is under no obligation to accept such offer. However, where Viva Energy does accept such offer then the Special Conditions for Sale set out in clause 10 of these terms and conditions will apply.

7. Insurance

General liability insurance

- 7.1 During the Hire Period:
- (a) the Customer at its own expense, shall obtain and maintain sufficient general liability insurance (including third party liability insurance) in respect of the Equipment and its operation and use to cover any liability that may arise as a result of the Customer's use of the Equipment or pursuant to these terms and conditions. The Customer's insurance must (unless otherwise agreed in writing by Viva Energy):
 - (i) cover loss, theft or damage to the Equipment arising during the Hire Period from any cause;
 - (ii) be for the full replacement value of the Equipment specified in the Equipment Letter;
 - (iii) be taken out with a reputable insurer;
 - (iv) name Viva Energy as an interested party on the policy; and
 - (v) be maintained for the whole Hire Period.
 - (b) The Customer shall not self-insure, unless self -insurance is agreed in writing between the Customer and Viva Energy.

Viva Energy may request certificate of currency

- 7.2 Upon the request of Viva Energy, the Customer shall provide a current insurance certificate/s confirming the coverage amount and all evidence of insurance premium payments.

Damage waiver option

- 7.3 Viva Energy and the Customer may specify in the Equipment Letter that the Customer's liability for damage, to the Equipment can be limited in some circumstances to an amount nominated as the 'damage waiver excess' as set out in the Equipment Letter. Where the Customer and Viva Energy have agreed to limit the Customer's liability for damage the terms and conditions upon which the Customer's liability is limited will be set out in the Equipment Letter including:
- (a) the additional damage waiver fee (if any) payable by the Customer as consideration for Viva Energy's agreement to limit the Customer's liability for damage; and
 - (b) excluded circumstances where the Customer's liability will not be limited.

8. PPSA

Definitions

- 8.1 Terms defined in the *Personal Property Securities Act 2009* (Commonwealth) (“PPSA”) and used in this clause 8 have the same meaning as in the PPSA.

Acknowledgements

- 8.2 The Customer acknowledges and agrees:
- (a) this agreement constitutes a security agreement and a PMSI for the purposes of the PPSA; and
 - (b) security interest is taken in all Equipment previously supplied by Viva Energy to the Customer (if any) and all the Equipment that will be supplied in the future by Viva Energy during the parties’ relationship.
- 8.3 The Customer agrees to do anything (including obtaining consents, signing or producing any further documents, and/or providing any further information) which Viva Energy ask and consider necessary for the purposes of:
- (a) ensuring that the security interest is enforceable, perfected and otherwise effective; and/or
 - (b) enabling Viva Energy or its advisers to apply for any registration, complete any financing statement, financing change statement or give any notification, in connection with the security interest; and/or
 - (c) enabling Viva Energy to exercise rights in connection with the security interest.
- 8.4 The Customer waives any rights it may have:
- (a) to receive notices under sections 95, 118, 121(4), 130, 132(3)(d), 132(4), 134(1) and 135 and 157 of the PPSA; and
 - (b) under sections 142 and 143 of the PPSA.
- 8.5 The parties agree that sections 96 and 117 of the PPSA do not apply to these terms and conditions.
- 8.6 Both parties will not disclose information of the kind mentioned in section 275(1) of the PPSA, and the Customer will not authorise, and will ensure that no other party authorises, the disclosure of such information.

9. Termination

Right of either party to terminate

- 9.1 Either party may terminate:
- (a) a hire arrangement and any Hire Period; or
 - (b) an agreement for sale / purchase of the Equipment, immediately by giving notice to the other party, if:
 - (i) the other party breaches these terms and conditions or any term of the Fuel Supply Contract or GTCs (as applicable) and fails to remedy the breach within 7 days of written notification of the breach; or
 - (ii) the other party becomes bankrupt or insolvent, executes a personal insolvency agreement, enters into liquidation, administration, receivership or ceases to carry on business, subject to any rights the Customer may have under the *Corporations Act 2001*.
- 9.2 These rights of termination are in addition to any other rights either party has under the Hire Agreement and do not exclude any right or remedy available under law or equity.

Consequences of termination

- 9.3 In the event of termination, Viva Energy may recover possession of the Equipment at the Customer’s cost. The Customer irrevocably authorizes Viva Energy to enter the location (or such other premises where the Equipment is located) for this purpose, subject to Viva Energy providing reasonable prior notice and complying with any reasonable site access procedures.

10. Special conditions for sale of the Equipment

10.1 Where the Customer and Viva Energy have agreed in writing for the Customer to purchase the Equipment then, unless expressly agreed otherwise in writing by Viva Energy, the following conditions shall apply to such purchase and sale (in addition to the other terms and conditions set out in this document which are stated to also apply where the Customer purchases the Equipment):

- (a) The parties acknowledge and agree that Viva Energy as owner of the Equipment has agreed to sell and the Customer has agreed to purchase the Equipment.
- (b) The description of the Equipment is fully known to the Customer and is based on the best information available to the Customer. To the extent permitted by law, Viva Energy makes no warranty, express or implied, as to the description of any of the Equipment. The Equipment is located at the Customer's premises.
- (c) Title in the Equipment will pass to Customer when Viva Energy receives the agreed purchase price (and GST amount) for the Equipment in full from the Customer.
- (d) Risk in the Equipment remains with the Customer in accordance with these terms and conditions on the basis that the Customer has already got possession of the Equipment.
- (e) The Equipment is provided and sold on an "AS IS" basis without representations or warranties of any kind whatsoever, express or implied, including, without limitation, non-infringement, merchantability or fitness for a particular purpose. Viva Energy does not warrant that the Equipment will be functional, error free or that defects will be corrected. Viva Energy makes no warranty that the Equipment will meet the Customer's requirements or expectations and Viva Energy expressly disclaims any warranties or guarantees that by selling the Equipment the Equipment will be suitable for any use or fit for any particular purpose.
- (f) All guarantees, terms, conditions, warranties, undertakings, inducements or representations whether express or implied, statutory or otherwise, relating to the sale of the Equipment are excluded to the maximum extent permitted by law.