

**SHELL CARD ONLINE TERMS AND CONDITIONS  
VERSION: AUGUST 2015**

**1. SCOPE**

- 1.1 These Terms and Conditions apply to use of the Shell Card Online (SCOL) web programme accessible via [www.vivaenergy.com.au](http://www.vivaenergy.com.au), by a customer of Viva Energy Australia Pty Ltd ABN 46 004 610 459 (**Viva Energy**) who has agreed to be bound by these Terms and Conditions by signing and returning an Application for Shell Card Online Access, by selecting the 'I accept' option in accordance with Clause 12, or by signing a Supply Agreement which incorporates these Terms and Conditions (**Customer**).
- 1.2 These Terms and Conditions operate in addition to the Shell Card Terms and Conditions of Use and any other document forming part of the contractual relationship between Viva Energy and the Customer (**Shell Card 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) Shell Card Contract;
  - (b) these 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. VARIATION OF THESE TERMS AND CONDITIONS**

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

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

**3. OPERATION AND OWNERSHIP OF SHELL CARD ONLINE**

- 3.1 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.
- 3.2 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.
- 3.3 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.

**4. SCOL AUTHORISED USERS**

- 4.1 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 account, each where available.
- 4.2 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.

- 4.3 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.
- 4.4 The Customer must ensure that the SCOL Authorised Users are aware of and comply with these Terms and Conditions and, without limiting the other provisions of these Terms and Conditions, the Customer is responsible for all acts and omissions of the SCOL Authorised Users.

## **5. LOGIN ID AND PASSWORD**

- 5.1 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.
- 5.2 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.
- 5.3 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.
- 5.4 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.

## **6. 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.

## **7. USE OF SHELL CARD ONLINE**

- 7.1 As long as the Customer complies with these 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 terms and conditions); or
  - (f) interrupt, interfere or attempt to interrupt or interfere with the operation of SCOL in any way.
- 7.2 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.

- 7.3 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.
- 7.4 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.

## **8. STATUS OF INFORMATION**

- 8.1 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.
- 8.2 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.
- 8.3 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.

## **9. PRIVACY AND DATA PROTECTION**

- 9.1 The Customer acknowledges that it has read and understood the Viva Energy Privacy Policy available at [www.vivaenergy.com.au](http://www.vivaenergy.com.au) (**Privacy Policy**).
- 9.2 Viva Energy will comply with the Privacy Policy (as amended from time to time).
- 9.3 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 14 - 18 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 14 - 18.

## **10. SHELL CARD CONTRACT**

Notwithstanding any requirement in the Shell Card 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.

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

- 11.1 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.

- 11.2 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.
- 11.3 To the extent permitted by law, Viva Energy shall have no liability under or in connection with these Terms and Conditions, whether for breach of these Terms and Conditions, negligence or any other tort, breach of statutory duty or otherwise, for any:
- (i) loss of profits, income, revenue, contracts or production;
  - (ii) business interruption or increased costs in operation;
  - (iii) damage to goodwill or reputation;
  - (iv) damage to equipment or machinery; or
  - (v) 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.
- 11.4 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).

## **12. ACCEPTANCE OF TERMS AND CONDITIONS**

- 12.1 In addition to signing the Application, by selecting the 'I accept' option at the end of these 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 Terms and Conditions, as amended from time to time.

## **13. GENERAL**

- 13.1 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. The contract formed by the Application for SCOL Access and these Terms and Conditions will terminate when the Customer's login IDs and Passwords are invalidated by Viva Energy or 2 business days have elapsed, whichever is earlier.
- 13.2 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 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 Shell Card Contract with Viva Energy.
- 13.3 The failure of Viva Energy to insist upon strict performance of any of the provisions of these Terms and Conditions will not be deemed a waiver of any subsequent breach of or default in these Terms and Conditions by the Customer.
- 13.4 If any term of these 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 Terms and Conditions in the relevant jurisdiction.
- 13.5 These Terms and Conditions are (subject to any express provisions in a Shell Card Contract to the contrary) governed by the law in force in the State of Victoria and any proceedings arising out of these Terms and Conditions shall be determined by a court of competent jurisdiction in that State.

**14. INTERNET PRIVACY INFORMATION**

During your visits to internet sites that are operated by Viva Energy Australia Pty 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).

**15. 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).

**16. 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 a 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.

**17. 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 ours. You are encouraged to review each internet site's privacy policy before disclosing any personal information.

**18. CONTACT US**

If you have any questions regarding the Viva Energy Privacy Policy or Clauses 14 - 18, 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