

Viva Energy Australia

General Terms and Conditions for the Sale of Aviation Fuels

April 2017

Contents

1. DEFINITIONS.....	2
2. INTERPRETATION	3
3. QUALITY	4
4. DELIVERY	4
5. PRICES, DUTIES, TAXES AND CHARGES	5
6. PAYMENT AND SECURITY.....	6
7. SUBSTITUTION	7
8. ACCOUNT IDENTIFIER CARDS.....	8
9. DEFUELLING	10
10. DELIVERIES OUTSIDE NORMAL ARRANGEMENTS.....	10
11. OPERATION OF AIRCRAFT SWITCHES AND VALVES	10
12. OPERATIONS IN THE PRESENCE OF PASSENGERS.....	10
13. DELIVERY IN HIJACK SITUATION.....	11
14. INDEMNITY.....	11
15. LIABILITY.....	11
16. FORCE MAJEURE	12
17. DISINVESTMENT.....	13
18. REDEVELOPMENT OF EXISTING AIRFIELDS AND NEW AIRFIELDS.....	13
19. TERMINATION	13
20. ASSIGNMENT.....	14
21. CONFIDENTIALITY.....	14
22. INFORMATION	14
23. WAIVER	15
24. AMENDMENTS & VARIATIONS.....	15
25. NOTICES	15
26. APPLICABLE LAW AND ARBITRATION	15
27. THIRD PARTY RIGHTS	15

1. DEFINITIONS

For the purpose of this Agreement the following terms shall have the following meanings (as hereinafter defined), unless the context otherwise requires:

“Account Identifier Card” means a card that evidences that the Buyer has an account with the Seller or Viva Associate or a Shell Associate and that may be used to uplift Fuel on trade credit subject to the terms of this Agreement and any other terms agreed by the parties from time to time.

“Affiliate” means in respect of: (a) the Buyer, its holding company and any subsidiary (other than the Buyer) of Buyer’s holding company; and (b) the Seller, any other Viva Energy Associate. For the purpose of this definition “holding company” and “subsidiary” have the meanings given to those expressions in s.1159 of the Companies Act 2006.

“Agreement” means these General Terms and Conditions of Sale for Aviation Fuels, any applicable Viva Energy Aviation Fuels Agreement and any schedules to any such Viva Energy Aviation Fuels Agreement.

“Buyer” means the party defined as such in the applicable Viva Energy Aviation Fuels Agreement, failing which any party that takes delivery of or agrees to take delivery of Fuel from the Seller or a Delivering Company subject to these General Terms and Conditions of Sale for Aviation Fuels.

“Buyer’s Aircraft” or **“Aircraft of the Buyer”** means aircraft owned, leased or operated by or on behalf of the Buyer.

“Calendar” means the Gregorian calendar.

“Defuel” (including other forms of the verb “to Defuel”) means to remove fuel from aircraft tanks irrespective of the circumstances or the quantities involved.

“Delegates” means associates, Affiliates, representatives, sub-contractors, directors, officers, employees, agents or volunteers.

“Delivering Company” means:

- (a) in respect of a Delivery Airfield specified in an applicable Viva Energy Aviation Fuels Agreement, the company (whether or not a Shell Associate) designated in such Viva Energy Aviation Fuels Agreement as the Delivering Company for that Delivery Airfield, failing which it shall mean the Shell Associate that has Fuel available for sale at that Delivery Airfield; or
- (b) the Shell Associate having Fuel available for sale at a Delivery Airfield and requested by the Seller to deliver Fuel to the Buyer;

“Delivery Airfield” means:

- (a) any airfield specified in any applicable Viva Energy Aviation Fuels Agreement;
- (b) any airfield at which the Seller permits the Buyer to (or has an arrangement for the Buyer to be permitted to) uplift Fuel upon presentation of an Account Identifier Card;
- (c) any airfield at which the Buyer uplifts Fuel using cash or any credit, charge or debit card accepted by the Seller or the Delivering Company or their respective authorised representatives; or
- (d) any other airfield at which the Seller, or a Delivering Company arranged by the Seller, supplies Fuel to the Buyer.

“Fuel” means Kerosine Type Jet Fuel, Widecut Type Jet Fuel, Aviation Gasolines and Methanol/Water Mixtures or any one or more of them.

“IATA” means International Air Transport Association.

“Interest Rate” means either:

- (a) LIBOR plus two per cent (2%); or
- (b) such other interest rate as the Seller and Buyer may agree from time to time.

“LIBOR” means the London inter-bank offered rate for one Month US Dollar deposits at the 11:00 a.m. fixing on the due date as published by Reuters or, if the due date is not a London banking day, on the immediately preceding London banking day.

“Month” means a Calendar month.

“Posted Airfield Price” means the standard price for Fuel quoted by the Seller or a Delivering Company at a Delivery Airfield.

“Seller” means the party defined as such in the applicable Viva Energy Aviation Fuels Agreement, failing which any party that supplies or proposes to supply Fuel to the Buyer subject to these General Terms and Conditions of Sale for Aviation Fuels.

“Seller’s Suppliers” means any body or person by whom directly or indirectly the Fuel to be purchased and sold hereunder is supplied to the Seller.

“Shell Associate” means:

- (a) Royal Dutch Shell plc;
- (b) any entity (wherever registered) which for the time being is directly or indirectly affiliated with Royal Dutch Shell plc.

For the purpose of this definition an entity is:

- (i) directly affiliated with another entity if the latter holds shares or their equivalent which control fifty per cent (50%) or more of votes exercisable at a general meeting (or its equivalent) of such entity;
- (ii) indirectly affiliated with an entity if a series of entities can be specified beginning with the first entity and ending with the other entity, so related that each entity of the series (except the ultimate controlling entity) is directly affiliated with one or more companies in the series.

“Viva Energy Associate” means;

- (a) Viva Energy Holding Pty Ltd;
- (b) any entity (wherever registered) which for the time being is directly or indirectly affiliated with Viva Energy Holding Pty Ltd.

For the purpose of this definition an entity is:

- (i) directly affiliated with another entity if the latter holds shares or their equivalent which control fifty per cent (50%) or more of votes exercisable at a general meeting (or its equivalent) of such entity;
- (ii) indirectly affiliated with an entity if a series of entities can be specified beginning with the first entity and ending with the other entity, so related that each entity of the series (except the ultimate controlling entity) is directly affiliated with one or more companies in the series.

“Viva Energy Aviation Fuels Agreement” means any written agreement between the Seller and the Buyer in which these General Terms and Conditions of Sale for Aviation Fuels are incorporated.

2. INTERPRETATION

2.1. In this Agreement where the context admits:

- (a) references to Clauses are references to clauses in these General Terms and Conditions of Sale for Aviation Fuels; and

(b) references to the singular shall include the plural (and vice versa).

2.2. The headings and any sub-headings are inserted for convenience only and shall not affect the construction of this Agreement.

SUPPLY OF FUELS

3. QUALITY

3.1. The relevant specifications that will be met by Fuels supplied hereunder are as follows:

(a) Kerosine Type Jet Fuel:

- (i) UK Ministry of Defence Standard DEF STAN 91-091/Issue 9, dated 3rd October 2016, or latest edition, for Turbine Fuel, Kerosene Type, Jet A-1, NATO Code F-35, Joint Services Designation: AVTUR; and AFQRJS Checklist Issue 29 of October 2016 Or latest edition.
- (ii) Jet A: the latest edition of ASTM D 1655.
- (iii) Russian TS-1: the latest version of GOST 10227.
- (iv) Chinese No.3 Jet Fuel: the latest version of GB 6537.

(b) Widecut Type Jet Fuel:

This is not widely available but will be supplied against the latest version of one of the main specifications, namely: DEF STAN 91-86; ASTM D6615; or CAN CGSB 3.22.

(c) Aviation Gasolines:

- (i) Avgas 100 or Avgas 100LL: the latest version of either DEF STAN 91-90, ASTM D 910 or CAN CGSB 3.25.
- (ii) Avgas 82UL: the latest version of ASTM D 6227.

(d) Methanol/Water Mixtures (Methmix):

Meeting the latest versions of DEF STAN 65-253 or Rolls-Royce specification MSRR 9359.

3.2. The express terms and conditions of this Agreement shall apply in place of all guaranties, warranties, conditions, terms, representations, statements, undertakings and obligations whether expressed or implied by statute, common law, custom, usage or otherwise, all of which are excluded to the fullest extent permitted by law.

4. DELIVERY

4.1. Unless otherwise agreed, Fuel supplied hereunder shall be delivered into aircraft tanks at the relevant Delivery Airfield at areas that are usually and regularly used by the Buyer for the uplift of Fuel.

4.2. If agreed by Seller and Buyer in writing prior to delivery, Fuel supplied hereunder may be delivered into or lifted from a fuel facility at the relevant Delivery Airfield, or otherwise.

4.3. Risk in and property to Fuel supplied hereunder shall pass to the Buyer:

- (a) when delivered into aircraft tanks, as the Fuel supplied passes the inlet coupling of the receiving aircraft; or
- (b) when delivered into a fuel facility, as the Fuel supplied passes the inlet coupling of the receiving fuel facility; or
- (c) when lifted from a fuel facility, as the Fuel supplied passes the outlet coupling of the supplying fuel facility; or
- (d) at the point otherwise agreed by Seller and Buyer in writing prior to delivery.

4.4. Provided the Buyer's aircraft arrives at its scheduled flight time the Seller shall use all reasonable endeavours to refuel the Buyer's aircraft promptly.

- 4.5. If the Buyer's Aircraft is operating:
- (a) a scheduled flight that arrives before or after its scheduled time of arrival, the Seller shall use its reasonable endeavours to fuel the aircraft promptly, subject to operational requirements imposed by other delivery commitments at the aircraft's actual time of arrival; or
 - (b) a non-scheduled flight, the Seller shall use its reasonable endeavours to fuel the aircraft promptly, subject to operational requirements imposed by delivery commitments either to aircraft operating scheduled flights at the time of arrival of the aircraft or to other aircraft operating irregular, non-scheduled flights that have arrived before the aircraft.
- 4.6. For deliveries at any Delivery Airfield, the Seller shall use the quality control and operating procedures (as amended from time to time) applicable to its operations at that Delivery Airfield.
- 4.7. In respect of any delivery made by the Seller, the Seller's measurements and quality analysis of the Fuel supplied shall be treated as conclusive, however, the conclusiveness of the results may be displaced to the extent that it can be shown that the results are incorrect. Any claim or complaint in respect of a shortage in quantity or defect in the quality of any Fuel supplied hereunder shall only be considered by the Seller if notice in writing of such claim is received by the Seller within fourteen (14) days of the date of the delivery in question and such notice is followed by a fully documented claim to be received by the Seller within sixty (60) days of the date of the delivery in question. If the Buyer fails to give notice or to submit any such claim within the time limits, the Buyer's claim shall be deemed to be waived and any liability on the part of the Seller extinguished.
- 4.8. The Buyer shall have the right to take, in a correct and appropriate manner, in the presence of the Seller samples of Fuels delivered and such samples shall be kept in accordance with internationally recognised methodology and practice.
- 4.9. If requested by the Buyer, the Seller shall provide a hydrometer and a thermometer for the Buyer to determine the density of a sample from a particular fuelling. At the Buyer's request, the Seller will provide a typical density, determined at an observed temperature, for Fuels supplied to the Buyer on the basis of other supplies made by the Seller on that day. This value may vary from time to time and the Seller accepts no responsibility whatsoever, howsoever arising, for any calculations based on the information provided by the Seller.
- 4.10. Unless otherwise agreed, the Seller shall provide the Buyer at the time of delivery with a copy of a delivery receipt specifying the grade and quantity of Fuel delivered. Except at unmanned sites, the delivery receipt shall be signed by the representatives of the Seller and the Buyer.

5. PRICES, DUTIES, TAXES AND CHARGES

- 5.1. Subject to Clause 9 and the following provisions of this Clause 5, the prices payable for Fuels to be supplied hereunder shall be (as applicable) either: those specified in the relevant Viva Energy Aviation Fuels Agreement; the Posted Airfield Price; or as otherwise agreed by the Seller and Buyer in writing and, in each case, shall, unless otherwise stated, be exclusive of Value Added Tax, sales tax or any other tax of a similar nature that may be levied in any jurisdiction.
- 5.2. Buyer shall (against the production of a valid tax or other invoice) pay any duty, tax, fee or charge of any kind imposed by any national, local or airport authority on the supply, delivery, sale, inspection, storage or use of Fuels, or on Defuelling, or in respect of payment for Fuels supplied hereunder and not included in the price for the Fuels, except for taxes on Seller's income and taxes on raw material. These duties, taxes, fees and

other charges shall be charged in accordance with the relevant regulations in force, and at the rate current, at the time of making the supply and, to the extent allowed, stated by the Seller as separate items on the invoice for the account of Buyer.

- 5.3. Third party charges included in the price of Fuels at the date of this Agreement shall be as stated in the applicable Viva Energy Aviation Fuels Agreement (if any) or as otherwise agreed between the parties from time to time in writing.
- 5.4. The prices of Fuels may be varied by the Seller to reflect wholly, and from the effective date, any changes in any duty, tax, fee or charge of any kind included in the prices of Fuels (or any new duty, tax, fee or charge of any kind to be included in the price of Fuels) that the Seller incurs in order to fulfil its obligations under this Agreement.
- 5.5. The Seller shall endeavour promptly to advise the Buyer of the imposition, or increase in, any duty, tax, fee or charge payable by the Buyer pursuant to Clauses 5.2 or 5.4 when such information becomes known to the Seller but the Seller's inability so to do shall not excuse the Buyer from its obligation to pay any such duty, tax, fee or charge from its effective date of application.
- 5.6. In cases where the Buyer is entitled to a complete or partial exemption from or refund of any duty, tax, fee or charge referred to in Clause 5.4 deliveries shall, so far as may be reasonably practicable, be made by the Seller in the manner required for obtaining such exemptions or refund and the Buyer shall deliver to the Seller a valid exemption certificate in respect thereof.
- 5.7. If any third party quotation ("Existing Quotation"), upon which the formula price is based, ceases to be published such other third party quotation ("New Quotation") shall be substituted as most nearly places the Parties in the position in which they would have been had the Existing Quotation continued to be published.
- 5.8. If there shall be any dispute of any kind in relation to the New Quotation to be used pursuant to Clause 5.7 above, then pending resolution of such dispute, a provisional formula price shall be calculated based on the most recently published Existing Quotation. As soon as the Parties have agreed on the New Quotation the formula price shall be re-calculated using such new agreed New Quotation. The amount of any resulting adjusting payment due to a Party, together with interest thereon accruing at the Interest Rate from the due date of payment of the provisional formula price referred to above until the date of such agreement, shall be included in the next invoice if due by the Buyer or, if due by the Seller, within ten (10) days of the Parties' agreement.
- 5.9. If a correction is issued to a previously published third party quotation upon which a formula price is based, the formula price shall be recalculated accordingly in respect of the period to which such correction applies. The amount of any resulting adjusting payment due to a Party, together with interest thereon accruing at the Interest Rate from the due date of payment of the formula price until the date of such correction, shall be included in the next invoice if due to the Buyer or, if due to the Seller, shall be paid within ten (10) days of such adjustment.

6. PAYMENT AND SECURITY

- 6.1. Subject only to the deduction of any amount in dispute, which shall be notified before the due date for payment by the Buyer to the Seller in writing, payment of the full amounts shown on all invoices rendered by the Seller to the Buyer hereunder shall be made in accordance with the terms and conditions set out in the applicable Viva Energy Aviation Fuels Agreement (if any), failing which payment shall be immediately due upon receipt of invoice.
- 6.2. Subject to Clause 6.1, if the Buyer fails to pay any invoice by its due date for payment the Seller may at its option:

- (a) surcharge each future invoice at the time of preparation at the Interest Rate, which amount will be refunded only if payment is received by the due date; and
 - (b) charge interest at the Interest Rate on any amount overdue for payment.
- 6.3. The Seller may (at the Seller's option) notify the Buyer of its credit limit (inclusive of Value Added Tax, sales tax or any other tax of a similar nature that may be levied in any jurisdiction) (the "Credit Limit"), which may be revised from time to time.
- 6.4. Subject to Clause 6.1, if at any time:
- (a) the Buyer fails to pay any invoice by its due date for payment;
 - (b) the reliability or the financial responsibility of the Buyer (or of any guarantor or other person furnishing security in support of the Buyer), in Seller's assessment, is becomes impaired or unsatisfactory; and/or
 - (c) the Buyer exceeds its current Credit Limit; the Seller may at its option:
 - i. immediately withhold future deliveries until all sums due have been paid in full;
 - ii. require the Buyer to make cash payment at the Posted Airfield Price at the Delivery Airfield at the time of any future delivery;
 - iii. receive from the Buyer, upon demand, immediate payment, in advance of the due date or of delivery or collection, in respect of each or any invoice, delivery or collection or any proportion thereof; and/or
 - iv. require the Buyer to provide any security satisfactory to the Seller.
- 6.5. After any demand or requirement set out in Clause 6.4(iii) or (iv), the Seller may (without prejudice to any other right to suspend delivery) cease delivery of the Fuels to be supplied hereunder or part thereof until such payment or security shall have been received by it.

7. SUBSTITUTION

- 7.1. Except as provided in this Clause 7, neither party may assign its rights or delegate its obligations hereunder, in respect of any Delivery Airfield, in whole or in part without the prior written consent of the other party.
- 7.2. At any time the Seller may transfer to a Delivering Company (without further notice to the Buyer) the Seller's rights and obligations under this Agreement in respect of supplies of Fuels to the Buyer at any Delivery Airfield (a "**Substituted Airfield**"). The Buyer agrees that upon such transfer it shall be bound to buy and take from that Delivering Company the whole or any part of the Fuels that under this Agreement are to be sold and delivered at that Substituted Airfield, upon the terms and conditions of this Agreement in all respects as if that Delivering Company was named as the Seller in this Agreement (except as provided in Clauses 7.3 and 7.4) and the Seller shall stand discharged from all of its obligations under this Agreement to the Buyer in respect of the supply of Fuels at that Substituted Airfield (except as provided in Clauses 7.3, 7.4 and 17).
- 7.3. Notwithstanding Clause 7.2:
- (a) notices to be given by or to the Seller or the Delivering Companies shall be given by or to the Seller; and
 - (b) for any Substituted Airfield, unless the Buyer is requested to make payments directly to the Delivering Company, payments shall be made to the Seller for the benefit of the Delivering Company.
- 7.4. Notwithstanding the foregoing provisions of this Clause 7, for any Substituted Airfield the Seller shall stand and remain bound as guarantor to the Buyer of the performance by the Delivering Company of its obligations under this Agreement in respect of supplies of Fuels at that Substituted Airfield.

8. ACCOUNT IDENTIFIER CARDS

- 8.1. At the Buyer's written request, the Seller may at its sole discretion issue to the Buyer Account Identifier Cards (or additional Account Identifier Cards) so that the Buyer may uplift Fuel subject to availability at Delivery Airfields.
- 8.2. Where the Seller is represented at a Delivery Airfield by a Delivering Company, and the Buyer uplifts Fuel upon presentation of an Account Identifier Card, the provisions of Clause 7 (Substitution) shall apply.
- 8.3. Any delivery address for an Account Identifier Card which differs from the Buyer's billing address or other any other address recorded and recognised as valid by Seller shall be confirmed by the Buyer in writing. The Seller may require the Buyer to provide proof of identity and trading from such address, and the name, address and other personal details of those persons whom the Buyer intends to authorise to use Account Identifier Cards (each an "intended authorised person"), so that these may be verified in order to comply with anti-money laundering legislation. Buyer shall ensure that all such persons comply with these terms and conditions. The Buyer consents to the disclosure to and use by the Seller or Seller's Affiliates of the Buyer's personal information and data in accordance with any consent given by the Buyer when requesting the issuance of an Account Identifier Card. The Buyer shall either ensure that each of its intended authorised persons gives similar consent in respect of his/her personal information and data or, failing which, inform the Seller that such person is no longer an intended authorised person. The Buyer shall immediately notify the Seller of any changes in any details contained or requested in the Buyer's request for Account Identifier Cards.
- 8.4. The Seller may issue Account Identifier Cards for an initial period and, subject to what the Seller considers to be sufficient usage of the card and the Buyer's performance in accordance with the terms of this Agreement, the Seller may renew any such card from time to time and for a specified period.
- 8.5. Each Account Identifier Card shall identify the registration number of the aircraft and/or the pilot's name in respect of which the Buyer is permitted to use the card. However, the Seller may, at its discretion and if requested by the Buyer, issue to the Buyer Account Identifier Cards without any aircraft registration number, that may be used in respect of any aircraft, or without any pilot name, that may be used by any pilot. The Buyer undertakes to pay the Seller for any deliveries of Fuel by any person or company against presentation of any Account Identifier Card issued to the Buyer. The Buyer indemnifies the Seller against any and all liability associated with the validation of either the aircraft registration number or the pilot's name (or both) against the number and/or name (if any) identified on the card presented and any delivery of Fuel that may be associated with such a validation.
- 8.6. The Seller shall invoice the Buyer for all deliveries of Fuel made to the Buyer against presentation of a valid Account Identifier Card notwithstanding the fact that the Buyer may otherwise be contracted to another supplier for Fuel at the airfield concerned.
- 8.7. In the absence of any price for Fuel specifically agreed between the Seller and the Buyer in respect of the use of an Account Identifier Card at a particular airfield the price applicable for the supply of Fuel shall be the Posted Airfield Price at that airfield for the Fuel in question.
- 8.8. Without prejudice to the other provisions of this Agreement, where an Account Identifier Card is used all duties, taxes, fees and charges of any kind levied or charged in connection with supply of Fuels under this Agreement and incurred by the Seller from time to time and not included in the price for the Fuels shall be for the account of the Buyer.

- 8.9. It is possible that these Account Identifier Cards may sometimes be honoured as a credit document by organisations or locations that are not authorised to represent the Seller. In such circumstances the Seller does not accept any responsibility for any transaction that may result, including with respect to acceptability of the card as a credit document, product availability, product quality, service standards, performance, delivery receipt, accuracy of meters, price or duties, taxes or other charges.
- 8.10. If Seller nevertheless at its discretion accepts a charge for Fuel delivered to Buyer against an Account Identifier Card at an airfield where the Seller is neither directly nor indirectly represented the Seller may charge the Buyer for such delivery at the price charged to the Seller together with any appropriate duties, taxes and charges plus an administrative service fee.
- 8.11. The Account Identifier Cards are the property of the Seller and shall, at the request of the Seller, be returned to the Seller if they are not being used in accordance with this Agreement. An Account Identifier Card may only be used by the Buyer if it is a current card which has not expired or been suspended or terminated. Each of the Seller and the Buyer may at its sole discretion suspend or terminate any or all Account Identifier Card(s) issued to the Buyer at any time by notice without ascribing any reason provided that suspension or termination shall not affect any outstanding obligations owed by the Buyer to the Seller under this Agreement. On notice of termination the Buyer shall return to Seller all affected Account Identifier Cards within fifteen (15) days of the time that notice is given. Buyer shall continue to be liable for the use of such cards prior to their return to Seller.
- 8.12. The Account Identifier Cards issued to the Buyer are not assignable or transferable and may only be used by the Buyer, the Buyer's pilots or in respect of the Buyer's aircraft. If there is a change in ownership or registration of any aircraft in respect of which an Account Identifier Card has been issued to the Buyer, or if a pilot named on an Account Identifier Card ceases to be authorised to use the card on behalf of the Buyer, the Buyer undertakes to return such Account Identifier Card to the Seller immediately. If the Buyer fails to do so, the Buyer undertakes to pay the Seller for any deliveries of Fuel obtained on trade credit by any person or company other than the Buyer against presentation of any such Account Identifier Card.
- 8.13. The Buyer undertakes to notify the Seller immediately if an Account Identifier Card is lost or stolen or subject to unauthorised use, providing full details of the card for identification. The Buyer shall be held responsible for any debts incurred against the presentation of such card prior to such notification.
- 8.14. The Buyer shall ensure that no Account Identifier Card remains in the possession of any person who has ceased to be one of its authorised representatives with respect to the use of cards issued to the Buyer.
- 8.15. Any alteration to an Account Identifier Card shall render it invalid.
- 8.16. The Seller reserves the right to vary, delete or supplement these terms and conditions, in so far as they apply to Account Identifier Cards, upon written notice to the Buyer. The first use of an Account Identifier Card by the Buyer after such notice has been given shall constitute acceptance of such terms and conditions as varied, deleted or supplemented.

AIRCRAFT OPERATIONS

9. DEFUELLING

- 9.1. At any Delivery Airfield, provided that Defuelling and storage of the Defuelled Fuel can be carried out in accordance with the quality control and operations procedures (as amended from time to time) applicable to the Seller's or Delivering Company's operations at that Delivery Airfield, Defuelling of Buyer's Aircraft shall be undertaken as soon as possible after the Buyer's request taking into account the Seller's (or Delivering Company's) other operational activities.
- 9.2. The Seller (or Delivering Company) shall have absolute discretion to:
- (a) receive back into its own storage the quantity of Fuel Defuelled, or
 - (b) segregate and store the Defuelled Fuel for re-delivery to the Aircraft of the Buyer from which it was Defuelled or to another Aircraft of the Buyer, or
 - (c) dispose of the Defuelled Fuel and credit the Buyer with any proceeds thereby obtained less any costs, charges, duties or taxes incurred by the Seller in arranging such disposal.
- 9.3. The Seller reserves the right to charge the Buyer a fee for the services set out in Clauses 9.1 and 9.2.

10. DELIVERIES OUTSIDE NORMAL ARRANGEMENTS

If the Buyer requests the Seller (or Delivering Company) to make deliveries:

- (a) at an area at any Delivery Airfield other than the areas usually and regularly used by the Buyer for the uplift of Fuels; or
- (b) by a different method than the one normally used for supplies of Fuels to the Buyer's Aircraft; or
- (c) outside the Seller's normal service hours (as published at the Seller's airport office), then;

the Seller reserves the right to charge the Buyer the additional costs and expenses incurred by the Seller in making such deliveries.

11. OPERATION OF AIRCRAFT SWITCHES AND VALVES

The Buyer or its Delegates shall be responsible for operating all appropriate switches, valves, and fuel quantity indicators on the Buyer's Aircraft but if all or part of this function is carried out by or on behalf of the Seller the Buyer hereby provides an indemnity in respect of such activities in the terms set out in Clause 14.

12. OPERATIONS IN THE PRESENCE OF PASSENGERS

- 12.1. Where it is permitted by the relevant local airport regulations, fuelling or Defuelling of Buyer's Aircraft (other than helicopters) where passengers are on board, embarking or disembarking, may be undertaken by or on behalf of the Seller provided that the Buyer hereby:
- (a) provides an indemnity in respect of such activities in the terms set out in Clause 14;
 - (b) agrees to ensure that the Buyer and the Buyer's Delegates comply with the provisions of the local airport regulations relating to the operation;
 - (c) agrees to ensure that instructions are issued to the Buyer's Delegates regarding the safety of all passengers during such operations and that these instructions are strictly observed; and
 - (d) agrees to ensure that passengers joining or leaving the aircraft are safely moved under the supervision of a competent person over a safe route away from such

operations and are actually prevented from smoking or causing any other potential source of ignition and are prevented from lingering.

13. DELIVERY IN HIJACK SITUATION

- 13.1. Notwithstanding anything to the contrary expressed or implied elsewhere herein, the Seller or the Delivering Company shall not be obliged to fuel or Defuel any of the Buyer's Aircraft if the aircraft in question is or is reasonably believed by the Seller or the Delivering Company to be under the control of hijackers, regardless of whether the fuel supply contract at that airport is held by the Seller or not.
- 13.2. If the Buyer or Buyer's Delegates request(s) that a delivery be made by the Seller or the Delivering Company or their respective Delegates in the circumstances set out in Clause 13.1 and such a delivery is made then the Buyer hereby:
- (a) agrees that the Fuel delivered shall be for the account of the Buyer; and
 - (b) provides an indemnity in respect of such activities in the terms set out in Clause 14.
- 13.3. If the Seller's or the Delivering Company's equipment is commandeered by the authorities and/or used as cover for military type operations, liability for resulting damage, injury or death to the Buyer or Buyer's Delegates is disclaimed to the fullest extent permissible by law.

14. INDEMNITY

- 14.1. In respect of any activities undertaken by the Seller or the Delivering Company or their respective Delegates pursuant to Clauses 11, 12 or 13 the Buyer hereby indemnifies and holds the Seller, the Delivering Company and its/their Delegates harmless against all claims, demands, proceedings, damages and liabilities for loss of or damage to any property whatsoever or for injury, including fatal injury or disease to any person whatsoever and against all associated costs (including legal costs) and expenses that arise out of or are connected with actions or omissions in the performance by the Seller, the Delivering Company or its/their Delegates of any or all of the activities described in Clauses 11, 12 or 13 and this indemnity shall apply except to the extent that loss, damage, injury, disease or death are caused by the gross negligence or wilful misconduct of the Seller, the Delivering Company or their Delegates.
- 14.2. In agreeing to the indemnity and hold harmless obligations in this Clause 14 the Seller acts for itself and acts or shall be deemed to act as agent and trustee for the benefit of the Delivering Company and the Delegates of the Seller and the Delivering Company so that the benefit of such indemnity extends to the Delivering Company and such Delegates and the Buyer unconditionally acknowledges that the Delivering Company and such Delegates can enforce this indemnity directly as if they were parties to this Agreement.
- 14.3. During the term of this Agreement Buyer shall effect and maintain with a reputable insurer airline aviation general third party liability insurance sufficient to cover its obligations under this Agreement and shall provide evidence of this insurance to Seller if requested.

GENERAL

15. LIABILITY

Except where expressly provided in this Agreement, neither the Seller nor the Buyer shall be liable to the other under or in connection with this Agreement for the other Party's: (a) loss of

actual or anticipated profit; (b) losses caused by business interruption; (c) loss of goodwill or reputation; or for any indirect, special or consequential cost, expense, loss or damage even if such cost, expense, loss or damage was reasonably foreseeable or might reasonably have been contemplated by the Parties and whether arising from breach of contract, tort, negligence, breach of statutory duty or otherwise.

16. FORCE MAJEURE

16.1. Neither the Seller nor the Buyer shall be responsible for any failure to fulfil their respective obligations under this Agreement (other than the payment of money) if fulfilment has been delayed, hindered, interfered with, curtailed or prevented by:

- (a) any circumstances whatsoever which are not within the reasonable control of the Seller or of the Seller's Suppliers or of the Buyer as the case may be; or
- (b) any curtailment, failure or cessation of the supplies of the Fuels from any of the Seller's or the Seller's Suppliers' sources of supply (whether in fact sources of supply for the purposes of this Agreement or not); or
- (c) any compliance with any order, demand or request of any international, national, port, transportation, local or other authority or agency or of any body or person purporting to be or to act for such authority or agency; or
- (d) any strike, lock-out or labour dispute (whether or not the Seller, the Seller's Suppliers or the Buyer as the case may be are party thereto or would be able to influence or procure the settlement thereof).

16.2. If by reason of any of the causes referred to in Clause 16.1 either the availability from any of the Seller's or the Seller's Suppliers' sources of supply of the Fuels or the normal means of transport of such Fuels is delayed, hindered, interfered with, curtailed, or prevented, the Seller shall be at liberty either to:

- (a) withhold, reduce or suspend deliveries hereunder to such extent as the Seller may in its absolute discretion think fit in which case the Seller shall not be bound to purchase or otherwise make good shortages resulting from any such cause, although the Seller will endeavour to arrange an equitable distribution of supplies which continue to be normally available in the events referred to above; or
- (b) offer the Buyer a restated price for supplies of the Fuels for deliveries with effect from the date (whether or not before the date of such restatement) on which the circumstances specified in Clause 16.1 affected deliveries at the Delivery Airfield concerned. If within ten (10) days of such notice the Buyer does not accept any restated price then the Seller may forthwith terminate deliveries at that Delivery Airfield but any such restated price shall, notwithstanding any failure to agree, be payable in respect of any Fuel delivered at that Delivery Airfield hereunder from the date of the Seller's notice. If the circumstances which have given rise to the operation of Clause 16.2 (b) become ameliorated or cease, thereby enabling a revision to be made in whole or in part to the Seller's or the Seller's Suppliers' normal sources of supply and/or routes and means of transportation, the Seller shall give written notice thereof to the Buyer together with appropriate adjustments to the restated price.

16.3. The performance of any obligation, whether arising out of any contract, arrangement or otherwise, by which any authority, agency, body or person is entitled to require and does require any of the Fuels by way of royalty in kind, shall be deemed to constitute a compliance with an order or request as provided in Clause 16.1(c), notwithstanding any agreement on the part of the Seller or the Seller's Suppliers to repurchase the same or any part thereof.

16.4. If the Seller withholds, reduces or suspends deliveries of Fuels hereunder pursuant to Clause 16.2(a) the Buyer shall be free, for so long as deliveries hereunder are withheld,

suspended or reduced, to purchase from other suppliers on its own account any deficiencies in the supply of Fuels arising as a result.

17. DISINVESTMENT

In respect of any Delivery Airfield, if the Delivering Company ceases to be a Shell Associate or there is a substantial change in the ownership or control of the business undertaking or assets of the Delivering Company or the Delivering Company ceases refuelling operations at that Delivery Airfield, the Seller shall be entitled to terminate this Agreement in respect of supplies at that Delivery Airfield upon giving the Buyer 30 (thirty) days' notice of such termination.

18. REDEVELOPMENT OF EXISTING AIRFIELDS AND NEW AIRFIELDS

18.1. If an existing Delivery Airfield specified in a Viva Energy Aviation Fuels Agreement is redeveloped or a new airfield is opened to replace any such Delivery Airfield (in which case, the redeveloped or new airfield shall become the specified Delivery Airfield for that location in the place of the existing Delivery Airfield), the Seller shall have the right to deliver the Buyer's requirements of the Fuels at such redeveloped or new airfield and if the Seller's costs of supplying at the redeveloped or new airfield are higher than the costs previously incurred then the Seller shall have the right to renegotiate the price of the Fuels to be supplied.

18.2. If the Seller and the Buyer cannot agree on the new price to be applied, pursuant to Clause 18.1 within thirty (30) days of the Seller requesting a new price, the new price shall be charged but the Buyer may terminate this Agreement in respect of supplies of Fuels at that redeveloped or new airfield upon 60 days' notice to the Seller.

19. TERMINATION

19.1. Seller may terminate this Agreement by notice to the Buyer, without prejudice to any rights of action or claims that it may have under this Agreement or otherwise, if:

- (a) subject to Clause 6.1, the Buyer:
 - i. fails to pay any invoice by its due date for payment; and/or
 - ii. fails to provide any payment or security mentioned in Clause 6.5 within a period of four London banking days after such being demanded or required;
 - iii. commits a breach of any of the other conditions or any other term of this Agreement, the effect of which breach is material, and which is either incapable of remedy, or, if capable of remedy is not remedied within thirty (30) days of service of notice by the Seller requiring remedy; whether or not such event or breach would otherwise qualify as a repudiatory breach at common law; or
- (b) the Buyer begins negotiations for, takes any proceedings concerning, proposes or makes any agreement for the deferral, rescheduling or other readjustment, general assignment of or an arrangement or composition with or for the benefit of some or all of its creditors of all or substantially all of its debts, or for a moratorium in respect of or affecting all or substantially all of its debts; or
- (c) any step is taken by any person (including the Buyer) with a view to the administration, winding up or bankruptcy of the Buyer; or
- (d) any step is taken to enforce security over or a distress, execution or other similar process is levied or served against all or substantially all of the assets or undertaking of the Buyer, including the appointment of a receiver, administrative receiver, trustee in bankruptcy, manager or similar officer; or

- (e) any event or circumstance occurs which under the law of any relevant jurisdiction has an analogous or equivalent effect to any of the termination events listed in Clauses 19.1 (b) to (d), inclusive; or
- (f) there is a Change of Control in relation to the Buyer; or
- (g) any event or circumstance referred to in this Clause occurs in relation to any person who has Control of the Buyer or who has provided security for Buyer in respect of this Agreement.

19.2. Subject to Clause 19.3, a Change of Control shall occur where:

- (a) a person acquires Control of the Buyer where no person previously had Control of the Buyer; or
- (b) the ultimate parent company of the Buyer ceases to have Control of the Buyer; or
- (c) a person acquires Control of the ultimate parent company of the Buyer; or
- (d) a person who is not under the Control of the ultimate parent company of the Buyer acquires Control of the Buyer.

19.3. For the purposes of this Agreement, a person has Control of a company if that person has direct or indirect ownership of fifty per cent (50%) or more of the voting rights attached to the issued share capital of that company.

20. ASSIGNMENT

20.1. The Buyer shall not assign this Agreement or any part hereof without the consent in writing of the Seller. The Seller may assign its rights and obligations under this Agreement to a Viva Energy Associate. Any such assignment shall be effected by notice in writing from the assignor countersigned by the assignee to signify its acceptance of the obligations under this Agreement.

20.2. Except as provided in Clause 7 and Clause 20.1 the Seller shall not assign this Agreement or any part hereof without the consent in writing of the Buyer.

21. CONFIDENTIALITY

This Agreement, the information that it contains and all information exchanged relating to it are confidential between the Buyer and the Seller. Neither the Buyer nor the Seller shall, without the other's written consent, disclose such information on any basis to any person other than its employees, its Affiliates or its Affiliates' employees except to the extent that disclosure may be compulsory to any Governmental Authority. Any disclosure by the Buyer or the Seller to their employees, or their Affiliates shall be on a confidential basis.

22. INFORMATION

22.1. Where the Seller or Seller's Affiliates receive, collect or handle personal information or data in the course of processing and administering the Buyer's account, the Seller shall ensure that it and its Affiliates have taken and continue to take all reasonable technical and organisational measures against unauthorised or unlawful processing or disclosure of the personal information and data. All personal information and data collected by the Seller or Seller's Affiliates will be treated in accordance with applicable laws.

22.2. Data supplied, whether personal or otherwise, by the Buyer and/or which relates to the Buyer's account will be held and processed by computer or otherwise by Seller or Seller's Affiliates to operate the Buyer's account(s), to confirm, update and enhance Seller's or Seller's Affiliates' customer records, for statistical analysis, to establish any identity or otherwise as required under applicable legislation, to assess the Buyer's credit status on an ongoing basis; and otherwise as considered necessary or appropriate by the Seller. In each case the processing may continue after the Agreement has ended. Alternatively, the Buyer may be requested to complete or fulfil other checks as may be

necessary to satisfy credit assessments, money laundering or fraud detection requirements.

22.3. The Seller may disclose data relating to the Buyer and/or the Buyer's account(s) to:

- (a) a credit reference agency where it may be accessed by other financial institutions to assist assessment of any application for credit made to the Seller and for debt tracing and fraud prevention;
- (b) to any agent or sub-contractor of the Seller performing services in connection with the Buyer's account;
- (c) to any person to whom the Seller proposes to transfer any of its rights and/or duties under this Agreement;
- (d) to any guarantor or person providing security in relation to the Buyer's obligations under this Agreement;
- (e) to any Affiliate of the Seller;
- (f) as required or permitted by law or any regulatory authority; or
- (g) as otherwise considered necessary or appropriate by the Seller and, in each case, the persons receiving such disclosure may be located in countries that do not have laws to protect such data. Details of the countries involved will be provided on written request by the Buyer.

23. WAIVER

23.1. No delay or omission by either Party in exercising any right, power or remedy provided by law or under this Agreement shall affect that right, power or remedy or operate as a waiver of it.

23.2. The single or partial exercise of any right, power or remedy provided by law or under this Agreement shall not preclude any other or further exercise of it or the exercise of any other right, power or remedy.

23.3. No waiver of any right, power or remedy provided by law or under this Agreement shall take effect unless it is in writing and signed by authorised representatives of the Party giving the waiver.

24. AMENDMENTS & VARIATIONS

This Agreement may not be amended or modified orally and no amendment or modification shall be effective unless it is in writing and signed by the authorised representatives of each of the parties.

25. NOTICES

All notices to be given hereunder by either party to the other shall be given in writing and shall, unless otherwise specifically agreed, be given to the party to be notified at its address as shown at the head of this Agreement.

26. APPLICABLE LAW AND ARBITRATION

This Agreement shall be construed and interpreted in accordance with the laws of the State of Victoria and the Seller and the Buyer submit to the non-exclusive jurisdiction of the courts of Victoria and courts competent to hear appeals therefrom.

27. THIRD PARTY RIGHTS

27.1. Where any undertakings or obligations of the Buyer herein are taken by the Seller for its own benefit and also for the benefit of Viva Energy Affiliates, Shell Affiliates, Delivering Companies and its/their Delegates, such undertakings or obligations are, intended,

subject to the provisions of Clause 27.3, to be held on trust by the Seller for the benefit of Viva Energy Affiliates, Shell Affiliates, Delivering Companies and its/their Delegates, and to be enforceable by such parties.

27.2. Except as provided in Clause 27.1, no term or condition contained herein shall be enforceable by any person who is not a party to this Agreement.

27.3. Notwithstanding Clause 27.1 above, this Agreement may be varied or terminated by the parties without notice to or the consent of any third party.