

# Standard Terms and Conditions

## Supply of Products and BP Fuelcard



### 1. DEFINITIONS

- 1.1 "Account" means a BP account opened for a Buyer pursuant to an Application.
- 1.2 "Application" means the "Credit Application" form or other BP approved form that a Buyer must complete to make an application to BP for the supply of Products on credit and/or the issue of a Fuelcard.
- 1.3 "BP" means BP Oil New Zealand Limited and includes Castrol NZ, a division of BP.
- 1.4 "Buyer" means the applicant named in the Application.
- 1.5 "Credit Limit" means the maximum amount of credit, set by BP in response to the Buyer's Application and notified by BP in writing to the Buyer, which subject to the payment terms specified in clause 5, the Buyer is allowed to remain outstanding on the Buyer's Account(s) with BP each month.
- 1.6 "Fuelcard" means the BP Fuelcard that is issued by BP pursuant to clause 24 of these Terms.
- 1.7 "Products" means in relation to purchases using Fuelcard those goods and services authorised for purchase using Fuelcard and in relation to purchases other than by using Fuelcard, the goods and services supplied to the Buyer by BP.
- 1.8 "PPSA" means Personal Property Securities Act 1999.
- 1.9 "Terms" means these terms and conditions as amended from time to time under clause 19.3.

### 2. ACCEPTANCE OF APPLICATION

- 2.1 BP will accept or decline an Application (at its sole discretion) by written notice to the Buyer within 21 days of receipt of the Application.
- 2.2 The Buyer acknowledges by signing the Application that the Buyer has received a copy of, and agrees to be bound by, these Terms.

### 3. CREDIT LIMIT

- 3.1 A Buyer must not exceed its Credit Limit.
- 3.2 BP may increase or decrease a Credit Limit given to a Buyer from time to time. BP will notify a Buyer in writing of any change to its Credit Limit. A Buyer may decline any increase to its Credit Limit.

### 4. PRICE

- 4.1 The price payable for the Products is as notified in writing by BP to the Buyer from time to time.
- 4.2 The Buyer acknowledges the prices charged by BP for Products may be varied by BP based on changes in wholesale crude oil prices, currency or exchange rates, the oil market generally, or the volume of Products purchased by the Buyer.
- 4.3 The price of Products purchased using Fuelcard will be charged by BP to the Buyer's Fuelcard Account.
- 4.4 In addition to the price of the Products, the Buyer is liable to pay:
  - (a) any applicable taxes and levies;
  - (b) for Fuelcard Accounts, an annual card fee of \$13.33 (plus GST) and a transaction fee of 8.88 cents (plus GST) for each Fuelcard transaction;
  - (c) for the order of Products, any minimum order charge BP may levy from time to time depending on the quantity of Products ordered;
  - (d) for the delivery of Products, any delivery charge BP may levy depending on the quantity of Products delivered, distance travelled to effect delivery to the Buyer and the date of the delivery.

### 5. PAYMENT

- 5.1 All payments by the Buyer to BP will be made without deduction or set-off, counter-claims or any other cause whatsoever.
- 5.2 Payment will be effected by direct debit to the Buyer's bank account in accordance with the direct debit form in the Application. Unless agreed otherwise in writing between BP and the Buyer or a different date is specified on an invoice, the payment of invoices will be made on the 10th day of the month after the month in which the relevant Products are supplied. Unless the Buyer disputes the debit with BP within 30 days of the debit, that debit and its amount shall be taken as accepted by the Buyer and not open to challenge.
- 5.3 If any direct debit is dishonoured or payment is otherwise not made in accordance with these Terms, the Buyer will, in addition to the unpaid amount, be liable to BP for:
  - (a) simple interest on the unpaid amount to 1.5% per month calculated daily; and
  - (b) all costs and expenses, including solicitor and client costs, incurred by BP in attempting to enforce payment or otherwise incurred as a result of the non-payment.
- 5.4 To the extent permitted by law, all money received by BP from the Buyer will be applied in the manner and order determined by BP.

### 6. MINIMUM PURCHASE CRITERIA

- 6.1 The Buyer agrees to purchase a minimum of the following Products:
  - (a) 250 litres of motor spirit or diesel; or
  - (b) 500 litres of lubricants,
- every calendar month ("Minimum Purchase Criteria").
- 6.2 BP may increase or decrease the Minimum Purchase Criteria by 14 days' notice in writing to the Buyer from time to time.

### 7. TITLE

- 7.1 Title in the Products will remain with BP until all money owing by the Buyer to BP (including any interest or other charges pursuant to clause 5.3) has been paid in full. The Buyer will keep such Products clearly identifiable as the property of BP until such time as they may be mixed with other Products in the ordinary course of business. This provision is inserted solely for the benefit of BP and does not entitle the Buyer to return or require the return of any Products which have not been paid for.
- 7.2 Until title in the Products passes to the Buyer, the Buyer will keep the Products free of security interests (as defined in the PPSA) other than in favour of BP.

### 8. BREACH AND TERMINATION

- 8.1 The Buyer may close any or all of the Buyer's Accounts on 14 days' written notice to BP. For the avoidance of doubt this termination right is in substitution for any right of cancellation under the Contractual Remedies Act 1979.
- 8.2 BP may terminate the Buyer's ability to purchase Products on credit terms, or suspend

or terminate any Account held by the Buyer, without notice if the Buyer breaches these Terms. A breach of these Terms includes any failure by the Buyer to maintain the Minimum Purchase Criteria. In any other case BP may terminate the Buyer's ability to purchase Products on credit terms on 2 days' written notice to the Buyer.

- 8.3 In the event of any breach of these Terms by the Buyer, BP may take such action as it is entitled to take by law, and, for the purpose of recovery of its Products, enter any site where they are stored or where they are reasonably thought to be stored and may take possession of them and the Buyer shall co-operate with BP to provide or procure such access as BP requires.
- 8.4 If the Buyer is in breach of its obligations to pay BP in respect of any Products but those Products have been sold by the Buyer then the Buyer shall, at the request of BP, assign to BP within 7 days all rights against the person or persons to whom the Products have been sold.
- 8.5 Upon termination, interest will accrue in accordance with clause 5.3 on any sum owing by the Buyer to BP until the total amount outstanding is settled in full.

### 9. CONSUMER GUARANTEES ACT

The Buyer acknowledges that all Products purchased by the Buyer using Fuelcard or otherwise are for the purpose of a business, as defined in the Consumers Guarantees Act 1993, and that the Consumers Guarantees Act 1993 does not apply to the supply of Products to the Buyer to the extent permitted by that Act.

### 10. FORCE MAJEURE

BP is not liable for any failure to supply or other default resulting from any event beyond BP's reasonable control.

### 11. INDEMNITY

The Buyer agrees to indemnify BP its officers, employees and agents against any claims or losses incurred by BP arising out of or in connection with the supply of Products (other than by reason of BP's negligence).

### 12. PERSONAL PROPERTY SECURITIES ACT

- 12.1 The Buyer will do such acts and provide such information as in the opinion of BP (acting in its absolute discretion) may be necessary or desirable to enable BP to perfect under the PPSA the security interest (as defined in the PPSA) created in respect of the Products as a first-priority interest, or with such other priority as BP may agree to in writing.
- 12.2 The Buyer waives any right to receive a copy of a verification statement under the PPSA and agrees, to the extent permitted by law, that, as between the Buyer and BP:
  - (a) sections 114(1)(a), 133 and 134 of the PPSA will not apply;
  - (b) the Buyer will have none of the rights referred to in paragraphs (a), (c) to (e) and (h) to (j) of section 107(2) of the PPSA; and
  - (c) where BP has rights in addition to those in Part 9 of the PPSA, those rights will continue to apply and, in particular, will not be limited by section 109 of the PPSA.
- 12.3 The Buyer must pay the costs, charges and expenses of and incidental to the need for, or desirability of registration of, a financing statement or financing change statement or any action taken by BP to comply with the PPSA (including complying with a demand given under section 162 of the PPSA) or to protect its position under the PPSA. The Buyer must pay any costs incurred by BP, including legal costs on a solicitor-own client basis, arising from any disputes or negotiations with third parties claiming an interest in any Products supplied to the Buyer.
- 12.4 The Buyer will not change its name without first notifying BP in writing of the proposed name change and the new name at least 7 days before the change takes effect.

### 13. NOTICES

- 13.1 Subject to clause 13.3, a notice or other communication will be deemed to have been duly received:
  - (a) if delivered by hand, at the time of delivery;
  - (b) if sent by pre-paid post, 2 business days after posting;
  - (c) if sent by facsimile, on the day of transmission;except that if a notice or other communication is delivered by hand, or received by mail or facsimile on a day which is not a day being Monday to Friday (inclusive) ("Business Day") or after 5pm on a Business Day, then the notices or other communication will be deemed to have been received on the next Business Day.
- 13.2 For the avoidance of doubt, the notice provisions in this clause 13 replace sections 185-189 of the PPSA.
- 13.3 Clause 13.1 does not apply to a notice given under clause 27 of these Terms. Notice under clause 27 is given when BP actually receives notice.

### 14. PRIMACY

- 14.1 These Terms will apply to the supply of all Products to the Buyer and/or the use of Fuelcard (except to the extent they are inconsistent with the terms of any written supply agreement for the provision of specific Products to the Buyer). In the event of such inconsistency the terms of the supply agreement will prevail.
- 14.2 Other than any written supply agreement (as specified in clause 14.1), these Terms supersede and replace any previous or existing negotiations, letters, offers, representations either verbal or in writing, between BP and the Buyer in relation to the supply of Products.

### 15. WAIVER

Failure or delay by either party in exercising any right in relation to the supply of Products does not constitute a waiver of that right. Waiver, to be effective, must be in writing.

### 16. JOINT AND SEVERAL

Where there is more than one Buyer, the liability of the Buyers is joint and several.

### 17. SEVERABILITY

Should any part or provision of these Terms be held invalid or unenforceable, such invalid or unenforceable part or provision will be deemed severed from these Terms and will not affect the validity or enforceability of the remainder of these Terms.



## 18. FURTHER ASSURANCES

Unless otherwise specified, each party will, at its own expense and when requested by the other, promptly do, sign and deliver everything reasonably required to give full effect to these Terms and the transactions contemplated by these Terms and will take all practical steps to ensure relevant third parties do the same.

## 19. MISCELLANEOUS

- 19.1 The Buyer's ability to purchase Products on credit terms is personal to the Buyer and may not be assigned.
- 19.2 BP may assign the Buyer's Accounts to any third party.
- 19.3 BP may unilaterally change any of these Terms and will post amended Terms on its website, [www.bp.co.nz](http://www.bp.co.nz), from time to time.
- 19.4 All communications directed to BP should be made to Customer Services, BP Oil New Zealand Limited, PO Box 892, Wellington.

## 20. SUPPLY OF BULK PRODUCTS

- 20.1 The terms and conditions set out in this clause 20 apply to Buyers who are supplied with Products by BP (via bulk delivery or otherwise) excluding the purchase of Products using Fuelcard.
- 20.2 BP warrants that the Products supplied will be of merchantable quality. No other warranty, expressed or implied, is given by BP.
- 20.3 BP will be relieved of all liability in respect of any claims relating to the quality of the Products if such claims are not made by the Buyer within 7 days of the delivery of those Products by BP to the Buyer. To the extent permitted by law, BP limits its liability to the replacement or the replacement cost of the relevant Products.
- 20.4 The Buyer must make available safe and unrestricted access for delivery at the site nominated for delivery in the Application, or otherwise as agreed by BP (the "Site") and provide not less than 3 working days prior notice of its delivery requirements. BP will use reasonable endeavours to deliver the Products ordered to the Site within 3 working days after receipt of the Buyer's order (excluding the day the order was received).
- 20.5 Delivery of the Products is made and risk will pass to the Buyer:
- (a) for liquid Products delivered by hose connection, when they pass into the permanent hose connection at the filling point at the Site; and
- (b) for packed or other Products, upon the removal of such Products from the delivery vehicle at the Site.
- 20.6 BP will provide to the Buyer, at the time of delivery or as soon as practicable after delivery, a delivery docket (the "Delivery Docket") specifying the type, quantity and price of the Products delivered.
- 20.7 The Buyer must submit to BP a six-month reconciliation of Products delivered by BP for the purposes of assessing apparent loss or disparity between measured and actual delivery quantities. If the Buyer submits such a reconciliation to BP, BP will consider making an adjustment of the amount invoiced for the relevant Products delivered to the Buyer for that reconciliation period, if it appears that any disparity is a result of short delivery or other cause (excluding leakage from the Buyer's own equipment). Provided that:
- (a) whether or not an adjustment is made by BP under this clause, as well as the extent of any adjustment, is at all times in BP's sole and unfettered discretion and the Buyer will not withhold payment for any delivery which is under consideration under this clause;
- (b) if any adjustment results in an increase in the amount payable for Products supplied, the

Buyer will pay that increase immediately; and

- (c) any reconciliation provided by the Buyer for consideration for adjustment of the invoiced amount under this clause must be submitted to BP within 30 calendar days of the final day of the relevant reconciliation period, in order to qualify for such consideration by BP under this clause.

## 21. EQUIPMENT

- 21.1 Any equipment provided by BP is supplied to the Buyer on loan from BP (the "Equipment").
- 21.2 The Buyer acknowledges and agrees that such Equipment, together with any substituted or additional Equipment or alterations, will remain at all times the property of BP and will only be used for the storage or dispensing of BP Products, unless the prior written consent of BP is obtained.
- 21.3 BP is not obliged to repair or replace any Equipment. BP may in its sole discretion remove all or any Equipment lent to the Buyer at any time.
- 21.4 The Buyer will be responsible for the proper care of the Equipment (fair wear and tear excepted) and will keep the Equipment insured against loss, theft or damage.
- 21.5 The Buyer agrees, upon receiving reasonable notice, to allow BP access to inspect, maintain or remove the Equipment and agrees that in the event of an emergency such notice will not be required. BP's rights under this clause continue notwithstanding the termination of the Buyer's Accounts.
- 21.6 The Buyer will observe BP's reasonable instructions as to the operation and maintenance of the Equipment and will conduct regular checks of the Equipment.
- 21.7 The Buyer uses and operates the Equipment at the Buyer's own risk.

## 22. COMPLIANCE

- 22.1 The Buyer agrees to comply with all legislation and guidelines, including guidelines and manuals issued by BP relating to the storage and dispensing of Products. BP may cease delivery if BP considers that there are concerns as to the degree of compliance with such legislation, guidelines or manuals.
- 22.2 The Buyer is responsible for obtaining all licences and consents necessary for the storage, dispensing or other dealings with the Products.
- 22.3 The Buyer will allow BP access to any site where Products are delivered, stored or dispensed upon reasonable notice so that BP can ensure compliance with these Terms.
- 22.4 The Buyer acknowledges it indemnifies BP, pursuant to clause 11, for any liability it may suffer directly or indirectly as a result of the Buyer's storage, dispensing or dealing with the Products.
- 22.5 The Buyer will not sell, or part with the possession of, the Products other than in the ordinary course of business of the Buyer.

## 23. LIABILITY

Except as otherwise stated in these Terms, and to the extent permitted by law, BP will not be liable to the Buyer for any loss or damage arising, whether directly or indirectly, out of the supply of Products or the performance or non-performance by BP of any obligation under these Terms

## 24. GENERAL USE OF YOUR BP FUEL CARD

- 24.1 The terms and conditions set out in clauses 24 to 29 apply to Buyers who are issued with a Fuelcard.
- 24.2 The Fuelcard is issued by BP for the person or vehicle nominated in the Application. The Buyer, as the Fuelcard Account holder, is responsible for the use of the Fuelcard(s) (including the PIN(s)) by person(s) who use the Fuelcard(s) and have knowledge of the PIN(s) ("Authorised User(s)").
- 24.3 The Fuelcard must be endorsed with the signature of the person named on the Fuelcard, or imprinted with the registration number of the vehicle identified on the Fuelcard, in the relevant space provided on the Fuelcard. By using or endorsing the Fuelcard the Buyer acknowledges it is bound by these Terms.
- 24.4 A Personal Identification Number ("PIN") is assigned to each Fuelcard. For all electronic transactions using a Fuelcard the Buyer or Authorised User must enter a PIN. The PIN must not be written on the Fuelcard or be kept as a written record with the Fuelcard. It is solely the Buyer's responsibility to ensure that only they and the Authorised User(s) use the Fuelcard and the PIN.
- 24.5 Every Fuelcard remains the sole property of BP at all times. BP may, at any time, require the return of any Fuelcard.
- 24.6 The Buyer agrees to comply with all guidelines and manuals issued by BP relating to the use of Fuelcard.
- 24.7 The Fuelcard may be used to purchase Products from participating retailers and automatic facilities approved by BP. The Fuelcard cannot be used to obtain cash, any cash equivalent, or cash for the refund of a Product.
- 24.8 The Fuelcard may be issued with a purchase limitation as set out in the Application. It is the Buyer's responsibility to ensure Authorised User(s) do not exceed the purchase limitation. The Buyer is responsible for any purchase in excess of the purchase limitation. BP is not liable to the Buyer for any Fuelcard purchase in excess of the purchase limitation.
- 24.9 When purchasing Products by Fuelcard it is the Buyer's responsibility to ensure any sales voucher or EFTPOS receipt correctly records the quantity, price and other details of the purchase. By entering the PIN or signing the sales voucher or EFTPOS receipt, the Buyer authorises the purchase of the Products and any costs to be charged by BP to the Buyer's Fuelcard Account. The Buyer agrees that entry of the PIN or signature of the person using the Fuelcard on the sales voucher or EFTPOS receipt, may be relied on by BP as valid authority from the Buyer for the purchase of the Products and the costs of such purchases shall be charged by BP to the Buyer's Fuelcard Account.
- 24.10 BP may from time to time issue a duplicate or replacement Fuelcard (including in circumstances where the Buyer requests a replacement for a damaged Fuelcard or shortly prior to the expiry of an existing Fuelcard). The destruction of the old Fuelcard is the responsibility of the Buyer and the Buyer will remain liable for any use of the old Fuelcard, notwithstanding the issue of a duplicate or replacement.

## 25. REPORTS

BP will provide the Buyer with a monthly tax invoice detailing the Fuelcard transactions for the previous month.

## 26. CREDITS

- 26.1 The purchase of Products on Fuelcard is between the Buyer and the participating retailer. The Buyer acknowledges BP has no liability to the extent permitted by law, directly or indirectly, in respect of the Products purchased by the Buyer using Fuelcard.

- 26.2 In the event the Buyer purchases defective Products, it is up to the Buyer to resolve this with the participating retailer from which the Products were purchased. If the return of defective Products is accepted by a participating retailer, the Buyer should obtain a copy of a credit voucher, which will be processed by BP as a credit against the Buyer's Fuelcard Account.

- 26.3 In the event the Buyer purchases defective Products from an automatic facility, the Buyer must give BP written notice of such purchase within 48 hours of the purchase. BP will, in good faith, investigate the quality of the Products purchased and may, at BP's sole discretion, replace the Products purchased or credit the Buyer's Fuelcard Account with the cost of the Products.

## 27. LOSS AND UNAUTHORISED USE OF FUEL CARD

If any Fuelcard (including the PIN) is lost, stolen or misused, the Buyer must notify BP immediately, requesting cancellation of that Fuelcard and confirm that notification in writing to BP within 24 hours. The Buyer will not be liable for any unauthorised transactions of the Fuelcard made after written notification of cancellation (due to loss or theft or misuse) is received by BP. BP will not be liable for any transactions on a Fuelcard effected prior to the day (being a usual working day) that BP receives from the Buyer written notification requesting cancellation (due to loss or theft or misuse) of that Fuelcard.

## 28. LIABILITY

Without limiting any other provision in these Terms, BP is not liable to the Buyer, whether directly or indirectly for:

- (a) the actions of any participating Fuelcard retailer;
- (b) any Products purchased on Fuelcard, in accordance with clause 24 (unless otherwise stated in these Terms);
- (c) any fault with any automatic facility used in conjunction with the Fuelcard;
- (d) any fault with the Fuelcard (including the PIN) itself;
- (e) any fault with the electronic system which processes the Fuelcard transaction;
- (f) any unauthorised use, misuse or fraud with a Fuelcard and/or PIN where BP has not received written notification of cancellation from the Buyer in accordance with clause 27;
- (g) any unauthorised use, misuse or fraud with a Fuelcard and/or PIN where BP has not received written notification of cancellation AND the returned Fuelcard from the Buyer in accordance with clause 29; and
- (h) any loss or damage suffered by the Buyer arising out of the supply of Products or the performance or non-performance by BP of any obligation under these Terms (unless otherwise stated in these Terms).

## 29. CANCELLATION

- 29.1 The Buyer may cancel a Fuelcard where it is no longer required by returning it to BP.
- 29.2 The Buyer must return any cancelled Fuelcard (unless lost or stolen), cut in half, to BP. The Buyer will remain liable for all transactions recorded against a cancelled Fuelcard until such time as the cancelled Fuelcard is actually received by BP (except where the Fuelcard is cancelled pursuant to clause 27). For avoidance of doubt, the Fuelcard Account will remain active for all other Fuelcards issued to the Buyer (if any).
- 29.3 Upon termination of any Fuelcard Account, all moneys owing to BP on that Account are due and payable to BP. Interest will accrue in accordance with clause 5.3 on any sum owing by the Buyer to BP until the total amount outstanding is settled in full.