

## **VIVA ENERGY PURCHASE ORDER GENERAL TERMS AND CONDITIONS**

### **1 GENERAL**

1.1 Subject to clause 1.2, these General Terms and Conditions (**GTCs**): (a) are incorporated into each purchase order (**PO**) issued by Viva Energy Retail Pty Ltd (**Viva Energy**); (b) are binding between Viva Energy and the supplier (**Supplier**) identified in the PO; and (c) supersede any Supplier terms for the goods (**Goods**) and services (**Services**) specified in the PO. Terms provided by the Supplier are not binding on Viva Energy unless Viva Energy agrees to them in writing.

1.2 If the parties have already agreed a contract for the supply of the Goods and Services, that existing contract will apply and not these GTCs.

1.3 Viva Energy and the Supplier will use the Ariba Network web based portal to interact and transact in regards to the supply of the Goods and/or Services (Ariba Network).

1.4 Viva Energy will communicate an offer to acquire Goods and/or Services from the Supplier via the Ariba Network in the form of a PO.

1.5 The relationship between the parties is independent contractors. Nothing in an Order or these Terms and Conditions gives rise to any relationship of agency, partnership or employment.

### **2 SUPPLY OF GOODS AND PERFORMANCE OF SERVICES**

2.1 The Supplier must supply the Goods to and perform the Services for Viva Energy in accordance with the PO.

2.2 The Supplier, must when supplying the Goods to and performing the Services for Viva Energy comply with: (a) all applicable laws, including without limitation any statute, rule, regulation, proclamation, ordinance, by-law, order, guideline, code or standard of any government agency, and the common law and equity (**Laws**); (b) any Viva Energy regulation or policy, including all directions and safety requirements, issued in writing to the Supplier by Viva Energy.

2.3 Without prejudice to any representations, guarantees or warranties under Law or otherwise given by the Supplier, the Goods and Services must, and the Supplier represents and warrants that the Goods and Services will: (a) be new, of acceptable quality, fit for Viva Energy's intended purpose and for the purpose for which goods and services of the same kind are commonly supplied, and free from any defect and any encumbrance or interest of a third party; (b) comply with any specification or description agreed with or given to Viva Energy; (c) be provided in accordance with highest industry standards; (d) be rendered with due care, skill and diligence; (e) not infringe the intellectual property rights of any third party; and (f) be delivered in accordance with the delivery instructions set out in the PO, including without limitation by or on (as applicable) the relevant delivery date(s).

2.4 If the Goods or Services fail to comply with clause 2.3, Viva Energy may (at its sole discretion, without prejudice to any other rights or remedies, and at the Supplier's sole risk and expense) do any one or more of the following: (a) terminate the PO; (b) return the Goods; or (c) require the Supplier to (and the Supplier must) replace the Goods with conforming goods, repair the Goods, reimburse Viva Energy the costs of replacement or repair of the Goods (by itself or via a third party), re-perform the Services, or reimburse Viva Energy the costs of performing the Services (by itself or via a third party).

2.5 The Supplier must immediately advise Viva Energy of any problems with the Goods and/or Services when it becomes aware of them.

2.6 Viva Energy may check the Goods and/or Services for compliance with the PO. If any component of the Goods and/or Services do not comply with the PO or these GTCs in any respect, Viva Energy may acting reasonably:

- a) pay only for the Goods or Services delivered or provided, if the quantity is less than the quantity ordered;
- b) reject and return any Goods that do not comply with the PO or the GTCs,
- c) and Viva Energy will not be liable to make any payment to the Supplier in respect of the Goods and/or Services or their delivery, installation, implementation or modification. The Supplier will refund to Viva Energy all amounts (if any) already paid by Viva Energy to the Supplier in respect of the non-compliant Goods and/or Services.

2.7 The rejection of part of an Order will not affect the validity of the remainder of the Order.

### **3 PAYMENT OF THE PRICE**

3.1 The price set out in the PO or otherwise agreed in writing between the parties (**Price**) is fixed, and (subject to clause 3.3) includes all taxes, customs duty (unless specifically exempt), packaging, handling, freight and delivery, insurance, and any other fees, levies, costs and charges.

3.2 The Supplier must, via the Ariba Network, nominate a bank account for the payment of the Price for the Goods and/or Services under the PO, and authorise Viva Energy to transfer the Price directly into the Supplier's nominated bank account. The Supplier must ensure its bank account details are up to date and accurate at all times, and agree to indemnify Viva Energy for any loss or damage suffered if the bank account details that the Supplier provides are incorrect.

3.3 The Supplier will submit valid tax invoices via the Ariba Network in respect of the Goods and/or Services, as appropriate, following delivery or completion of the Goods and/or Services. All tax invoices will show the Price for the Goods and Services and separately itemise the applicable GST.

3.4 Unless the Price is expressly stated to be GST inclusive, Viva Energy must pay to the Supplier an additional amount on account of GST, calculated by multiplying the Price by the applicable GST rate. Reimbursements for costs or expenses are calculated net of any available input tax credits.

3.5 Viva Energy must pay any undisputed amount in the week following the day that is 30 days from receipt by Viva Energy of the tax invoice in which the amount is claimed.

3.6 Payment by Viva Energy is payment on account only and is not acceptance by Viva Energy of the Goods or Services or evidence that the Goods or Services comply with the PO.

### **4 LIABILITY AND INSURANCE**

4.1 Despite any other provision of these GTCs and to the extent permitted by Law, neither party will be liable to the other for any indirect or consequential loss, or any special, exemplary or punitive damages, in connection with the PO.

4.2 The Supplier must maintain and ensure its subcontractors maintain, for the duration of the PO, all insurances required by Law in connection with the PO.

4.3 The Supplier indemnifies Viva Energy and our personnel against any Liability arising out of or otherwise in connection

with:

- a) any breach by the Supplier or its personnel (including approved subcontractors) of any provision of PO or these GTCs;
- b) any fraud or negligent act or omission or wilful misconduct by the Supplier or its personnel (including approved subcontractors) in connection with the PO;
- c) any act or omission by the Supplier or its personnel (including approved subcontractors) which causes or contributes to an infringement of any of Viva Energy's Intellectual Property Rights or the Intellectual Property Rights of any third party;
- d) any loss of, or damage, to any property (including personal effects and damage to, corruption or loss of data or systems) caused or contributed to by the Supplier or its personnel (including approved subcontractors); and
- e) any injury to or death of any person caused or contributed to the Supplier or its personnel (including approved subcontractors),

except to the extent that loss is directly attributable to Viva Energy's negligence or wrongful act or omission.

4.4 The amount of any indemnity payable by a party under these GTCs will be increased by the amount of GST payable by the other party in respect of that indemnity.

## **5 OWNERSHIP AND RISK**

5.1 If the Goods are delivered FIS, then the risk of damage to or loss of the Goods passes to Viva Energy when the Goods are delivered to the Delivery Address.

5.2 If the Goods are delivered FOB, then the risk of damage to or loss of the Goods passes to Viva Energy when We, or our carrier, obtains possession of the Goods.

5.3 Unless otherwise agreed, title to Goods vests in Viva Energy on the earlier of delivery to the delivery address or the first date on which Viva Energy makes a payment for the Goods. Risk of loss or damage to Goods remains with the Supplier until delivery of the Goods to Viva Energy in accordance with the PO or as otherwise agreed in writing between the parties.

5.4 Viva Energy will own, and the Supplier hereby assigns its rights, title and interest in and to, any intellectual property rights (including, without limitation, copyright, patent, trademark, design, semi-conductor or circuit layout rights, and other protected rights, existing worldwide) created in connection with the supply of the Goods and performance of the Services (**Developed IP**), except to the extent the Developed IP contains intellectual property rights created independently of the PO (**Existing IP**).

5.5 The Supplier grants Viva Energy a worldwide, transferable, sub-licensable, non-exclusive, perpetual, royalty free licence to use, reproduce, modify and communicate any Existing IP for the purposes of Viva Energy using, adapting or modifying any Goods or Services and for such other purposes as may be required by Viva Energy in accordance with the PO. Viva Energy grants the Supplier a non-exclusive, non-transferable licence for the term of the PO for the Supplier to use the Developed IP to the extent necessary for the Supplier to perform its obligations under the PO.

## **6 TERMINATION**

6.1 Viva Energy may terminate the PO for convenience in whole or in part in its sole and absolute discretion on not less than 14 days' written notice, in which case the Supplier is entitled to be paid that part of the Price not already paid by Viva Energy for: (a) Goods supplied and Services performed before the date of termination; and (b) the direct costs reasonably incurred by the Supplier, before the Supplier received the written notice terminating the PO for convenience, in anticipation of and for the purpose of supplying the Goods or performing the Services.

6.2 A party may immediately terminate the PO by written notice to the other if the other party: (a) breaches these GTCs and the breach cannot be remedied, or can be remedied but is not remedied within the time specified in a written notice to that other party (provided that such time is not less than 7 days); (b) becomes bankrupt or insolvent, or is subject to an analogous event; or (c) breaches a Law referred to in clause 13.3.

## **7 ASSIGNMENT AND SUBCONTRACTING**

7.1 The Supplier cannot subcontract or assign its rights or obligations in connection with the PO without Viva Energy's prior written consent. Viva Energy may at any time transfer its rights and obligations in connection with the PO by novation to any person or combination of persons. The Supplier must, if requested by Viva Energy, do all things necessary to effect such a novation, including executing a deed of novation.

## **8 CONFIDENTIAL INFORMATION**

8.1 Each party must keep confidential the other party's Confidential Information, save: (a) as required by Law (including disclosure to any stock exchange); (b) as necessary to perform its obligations and exercise its rights or make or defend any claim in connection with the PO; or (c) to its legal advisers, accountants or auditors.

8.2 In these GTCs, Confidential Information means all information disclosed to a party by the other party in connection with the PO, but for the avoidance of doubt does not include information that is or becomes public (through no fault of the party) or is lawfully in the possession of the party before the other party disclosed it.

## **9 INFORMATION SECURITY**

9.1 The Supplier must comply with any Viva Energy information security policies and directions provided to the Supplier from time to time, including any policy in relation to information security testing.

9.2 The Supplier must ensure that: (a) media containing software it provides under this Contract holds no viruses, worms, spyware, adware, keyloggers, trojans or analogous computer code (b) it uses any IT facilities Viva Energy makes available to it with due skill, care and diligence, and only for purposes authorised by Viva Energy; and (c) the Supplier and anyone it authorises to use those IT facilities complies with Viva Energy's IT security policies.

9.3 Viva Energy may monitor and record the Supplier's access to and use of Viva Energy's IT facilities, software or systems to verify compliance with this clause 9, the Supplier must give Viva Energy accurate records of such access and use on request, and Viva Energy may require the prompt removal and replacement of anyone the Supplier authorises to use those facilities.

## **10 PRIVACY**

10.1 Without limiting the Supplier's obligations under the PO or these GTCs, the Supplier must:

- a) comply with all Privacy Laws;
- b) not do anything that would cause Viva Energy to breach its Privacy Policy; and

- c) comply with any reasonable directions from Viva Energy in connection with the disclosure or handling of any Personal Information,

in the performance of its obligations under the PO and these GTCs.

#### **11 WAIVER AND SEVERABILITY**

11.1 The failure by a party to exercise any power or right, or to insist on strict performance of any of these GTCs, will not be deemed a waiver of that power or right, of any subsequent breach.

11.2 If a provision in these GTCs is or becomes illegal, void or unenforceable, that part is or will be severed from these GTCs to the intent that all parts that are not or do not become illegal, void or unenforceable remain in full force and effect and are unaffected by that severance.

#### **12 AUDIT**

12.1 Viva Energy may, at any reasonable time and upon reasonable notice, audit and take copies of the Supplier's business records relating to the PO, to verify the Supplier's compliance with these GTCs, or to verify invoices or claims from the Supplier or payments by Viva Energy.

12.2 The Supplier must maintain such records for at least two years after termination or completion of the PO, save for records relating to compliance with clause 13.3, which must be maintained for seven years.

#### **13 GOVERNING LAW AND OTHER MATTERS**

13.1 The Laws of the State of Victoria apply to the PO, and the courts of Victoria and the Commonwealth of Australia will have exclusive jurisdiction over any matter arising out of or in connection with the PO.

13.2 The Supplier must comply with Viva Energy's: (a) Business Principles and Code of Conduct; and (b) Supplier Code of Conduct, each as amended from time to time (available at <https://www.vivaenergy.com.au/>), when performing its obligations under the PO.

13.3 The Supplier must not make or authorise a public statement relating to the PO or these GTCs (including on any advertising or promotional materials or third party tender response) unless Viva Energy has given its prior written consent.

13.4 The Supplier must, in connection with the PO, comply with all applicable Laws concerning: (a) bribery and corruption (including Division 70 of the Schedule to the Criminal Code Act 1995 (Cth), the United States Foreign Corrupt Practices Act of 1977 and the United Kingdom Bribery Act 2010); (b) slavery and child labour (including the Modern Slavery Act 2018 (Cth) and Divisions 270 and 271 of the Schedule to the Criminal Code Act (Cth)); (c) trade sanctions (including Part 3 the Autonomous Sanctions Act 2011 (Cth)); and (d) competition (including Part IV of the Competition and Consumer Act 2010 (Cth)).

#### **14 DEFINITIONS AND INTERPRETATION**

14.1 In these GTCs, the following terms have these meanings:

- a) **FIS** means "Free into Store" where the Supplier will deliver the Goods into Viva Energy's store, including procuring storage, loading, freight and transportation of the Goods services as required.
- b) **FOB** means "Free on Board" where the Supplier will deliver the Goods to Viva Energy at an agreed delivery point, from which point Viva Energy is responsible for the freight.
- c) **Intellectual Property Rights** means all present and future intellectual property rights, including any copyright (including future copyright), trade mark, design, patent and circuit layout rights, rights in respect of trade secrets and other confidential information.