

# Viva Energy Terms & Conditions April 2022

The Customer agrees to be bound by these Viva Energy Terms & Conditions for any order placed with Viva Energy for Goods, or any credit facility provided by Viva Energy to the Customer. In the event of any inconsistency between the terms of an executed agreement between Viva Energy and the Customer and these Viva Energy Terms & Conditions, the terms of the executed agreement shall prevail to the extent of the inconsistency. The Customer's terms and conditions of purchase (including any conditions on the Customer's purchase order) are excluded. These Viva Energy Terms & Conditions shall apply on an individual order basis only and shall not be construed as conferring an ongoing relationship or term contract between the Customer and Viva Energy. Viva Energy has no obligation to accept any order from the Customer and (unless expressly agreed to the contrary) the Customer has no obligation to place orders with Viva Energy.

## 1. Definitions

'**Affiliate**' means a related body corporate as that term is defined in the Corporations Act 2001 (Cth) and, in relation to Viva Energy, also includes members of the Vitol Controlled Group.

'**Application**' means the application form executed by or on behalf of the Customer and provided to Viva Energy in respect of the supply of Goods.

'**Business Day**' means any day other than a Saturday, Sunday or public holiday in Melbourne, Victoria.

'**Customer**' means the entity set out in the Application to whom Viva Energy is supplying Goods.

'**Goods**' means any goods or services which Viva Energy has agreed to supply to the Customer.

'**Vitol Controlled Group**' means Vitol Holding B.V. and Vitol Investment Partnership Limited and any person from time to time directly or indirectly Controlled by either such entity, with 'Control' having the meaning in the Corporations Act 2001 (Cth).

'**Viva Energy**' means Viva Energy Australia Pty Ltd (ABN 46 004 610 459).

## 2. Goods

Subject to these Viva Energy Terms & Conditions, Viva Energy will sell and the Customer will purchase, quantities of Goods pursuant to orders which are submitted by the Customer and accepted by Viva Energy from time to time. Without limitation, the Customer acknowledges that Viva Energy will not accept orders for Goods in quantities or volume less than the minimum order quantity as notified by Viva Energy from time to time.

## 3. Price

- The price payable by the Customer will be calculated based on the time and place of delivery, the time and place of loading into the relevant delivery vehicle, or the date that Viva Energy processes the Customer's order as set out in a confirmation of Purchase Order. The prices listed on delivery notes are indicative only. Any price indications or price lists issued by Viva Energy are subject to alteration upon prior written notice to the Customer prior to implementation.
- The Customer must pay all taxes, duties and other levies imposed or assessed at any time on or in respect of the Goods which are not included in the price.

## 4. Goods and Services Tax

All italicised terms in this clause have the meaning set out in section 195-1 of the A New Tax System (Goods and Services Tax) Act 1999 (Cth), as amended ('GST Act'). All amounts payable under these Viva Energy Terms & Conditions are exclusive of GST. If any party makes a taxable supply under or in connection with these Viva Energy Terms & Conditions, that party may in addition to the amount payable under these Viva Energy Terms & Conditions, recover from the other party an additional amount on account of GST, calculated by multiplying the amount payable under these Viva Energy Terms & Conditions by the GST rate (within the meaning of the GST law, being 10% currently). Where a taxable supply is made under or in connection with these Viva Energy Terms & Conditions, the party which makes the supply must issue to the other party a valid tax invoice or an adjustment note, as applicable, in accordance with the GST Law.

## 5. Payment

- Unless otherwise agreed, payment for the Goods shall be made by the Customer no later than the 21st day of the month following the month in which the Goods were delivered by Viva Energy (the 'Due Date'). If the Due Date falls on a day that is not a

Business Day, then the Due Date is deemed to be the prior Business Day.

- Payment shall be made by means of automatic debit by Viva Energy from the Customer's bank account, in accordance with clause 12, or as otherwise agreed.
- If the Customer fails to make any payment to Viva Energy when due, Viva Energy may charge the Customer simple interest on the overdue amount from the Due Date until payment, accruing daily and calculated at 5% above the AFMA 90 Days Bank Bill Swap Reference Rate: Average Mid quoted on the first Business Day of the month in which the interest accrues.
- The Customer shall pay all fees and charges determined by Viva Energy, including (without limitation) left on board surcharge, urgent order surcharge, small order quantity surcharge, and any other fee or charge as advised by Viva Energy in writing. Viva Energy reserves the right to change the amount of any of these fees and charges upon providing reasonable prior written notice to the Customer.
- The Customer shall pay any costs or expenses incurred by Viva Energy in enforcing its rights under these Viva Energy Terms & Conditions, including (without limitation) debt collection fees and legal costs.
- In addition to our entitlements under clause 16, and without prejudice to our rights under clause 10, Viva Energy may at any time vary the manner and/or terms of payment by providing reasonable prior written notice to the Customer.
- In addition to our entitlements under clause 16, and without prejudice to our rights under clause 10, Viva Energy may at any time vary the manner and/or terms of payment by providing reasonable prior written notice to the Customer.

## 6. Title and Risk

Title and risk in the Goods shall pass from Viva Energy to the Customer at the time of delivery to the Customer or pick up by the Customer (as applicable).

## 7. Deliveries

- Viva Energy may make deliveries of Goods by such means of delivery and in such tanks or other containers as Viva Energy may select. The Customer must take delivery in accordance with Viva Energy's delivery schedule from time to time and allow reasonable time for Viva Energy to deliver.
- Deliveries of Goods shall be made at such place as Viva Energy and the Customer agree.
- Where the Customer gives Viva Energy adequate notice of the Customer's specific requirements of Goods (which notice must not be less than the relevant Viva Energy lead time for the particular Good applicable from time to time), Viva Energy will use reasonable endeavours to deliver (or make available for pick up if applicable) pursuant to the Customer's order, subject to Viva Energy's delivery schedule applicable from time to time.
- The quantity of Goods actually supplied may vary from the quantity ordered by the Customer by up to +/-5% for fuels and bitumen and +/- 10% for lubricants and other goods. Viva Energy will charge the price for the quantity supplied.
- Ownership of any container passes to the customer with the Goods, except for deliveries of Goods in bulk containers. Bulk containers shall remain the property of Viva Energy. The Customer will not use bulk containers for the storage or dispensing of any Goods not supplied by Viva Energy, and will return the containers to Viva Energy when required by Viva Energy. In this clause "bulk containers" does not include One Trip Cubes.
- The Customer must comply with all relevant local and national laws and regulations relating to health, safety and environmental conservation when receiving, storing and handling the Goods. Nothing in this clause places any responsibility on Viva Energy for the Customer's compliance with such laws and regulations and Viva Energy may withhold supply of the Goods to the Customer at any time Viva Energy becomes aware of or believes any supply would cause any risk or danger to health, safety or the environment.
- Viva Energy will provide a delivery docket at the time of delivery. The Customer must sign the delivery docket if requested by Viva Energy and the delivery docket shall, in the absence of fraud or manifest error, be conclusive evidence of delivery to the

Customer (including where the delivery docket and/or signature is electronic). Failure by Viva Energy to obtain the Customer's signature does not relieve the Customer from its payment obligations.

- If Viva Energy permits the Customer to pick up Goods at a Viva Energy site, the Customer must comply with the applicable site access conditions, as notified (and amended) by Viva Energy from time to time. The Customer agrees and acknowledges that use of a gantry electronic swipe card by the Customer as shown in Viva Energy's records shall, in the absence of fraud or manifest error, be conclusive evidence of delivery to the Customer.
- If the Customer directs Viva Energy to deliver the Goods to a vessel or to a third party (including to a third party's vessel), the Customer will be liable to Viva Energy for the acts and omissions of the crew of that vessel and of that third party.

## 8. Discrepancies

Subject to law, Viva Energy need not consider any claim by the Customer in relation to:

- the quality of any Goods unless:
  - the Customer gives notice to Viva Energy of any claim, specifying the facts on which the claim is based, within 30 Business Days of delivery;
  - the Customer uses its best endeavours to minimise loss and damage arising from the alleged defect; and
  - Viva Energy is given reasonable opportunity to take samples, inspect and test the Goods in respect of which the claim is made.
- the quantity of Goods stated on any delivery docket or invoice compared with the amount delivered to the Customer, unless the Customer has notified Viva Energy of such discrepancies within 30 Business Days of delivery.

## 9. Force Majeure

Viva Energy will not be responsible for any failure to comply or any delay in complying with any of these Viva Energy Terms & Conditions if compliance has been delayed, hindered, interfered with or prevented by any cause beyond Viva Energy's reasonable control, a strike, lock-out or other industrial action (whether or not Viva Energy is a party to it or would be able to influence or procure its settlement), compliance with a government request, or any curtailment or failure of the supplies of Goods from any of Viva Energy's or Viva Energy's supplier's sources of supply or of the normal means of transport of Goods. During a supply shortage, Viva Energy may, in its absolute discretion, withhold, suspend or reduce supply of Goods to the Customer, and will not be required to purchase or otherwise make good any resulting shortages of supply to the Customer. Nothing in these Viva Energy Terms & Conditions requires Viva Energy to settle any strike, lock-out or other industrial action on terms unacceptable to it.

## 10. Termination

Viva Energy may suspend, withdraw or terminate the supply arrangements set out in these Viva Energy Terms & Conditions, including any credit facility granted to the Customer, upon reasonable prior notice and explanation to the Customer (for the avoidance of doubt no less than 48hours). Viva Energy disclaims all liability to the Customer for any loss, damage or injury resulting from such withdrawal or termination. Any order for Goods accepted by Viva Energy which remains to be fulfilled may be cancelled at Viva Energy's option without liability on Viva Energy's part.

## 11. Limitation of Liability

- It is acknowledged by the Customer that the Customer has made its own investigations and its own assessment of the suitability of the Goods (including any services) for the use to which they will be put. To the extent permitted by law, all terms, guarantees, conditions, warranties or undertakings (whether express or implied, statutory or otherwise, oral or written relating in any way to the supply of the Goods (including any services) or to these Viva Energy Terms & Conditions are excluded including, without limitation, any guarantees or warranties of acceptable quality, merchantability or fitness for purpose.

- b. To the extent permitted by law, the liability of Viva Energy and its Affiliates under or in connection with these Viva Energy Terms & Conditions (whether on the basis of breach of contract, breach of an express, implied or statutory guarantee or warranty, pursuant to any indemnity, negligence or otherwise) for loss or damage suffered by the Customer or any third party is limited to:
- in the case of goods: (A) replacement of the goods or the supply of equivalent goods; or (B) payment of the cost of replacing the goods or of acquiring equivalent goods,
  - in the case of services: (A) the supplying of the services again; or (B) the payment of the cost of having the services supplied again.
- c. In addition, to the extent permitted by law neither Viva Energy nor its Affiliates shall have any liability under or in connection with these Viva Energy Terms & Conditions, whether for breach of these Viva Energy Terms & Conditions, pursuant to any indemnity, negligence or any other tort, supposed to statutory duty or otherwise, for any:
- loss of profits, income, revenue, contracts or production;
  - business interruption or increased costs in operations;
  - damage to goodwill or reputation;
  - damage to plant, equipment or machinery as a result of any late delivery of Goods;
  - indirect losses or expenses or consequential damage 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.
- d. In addition, to the extent permitted by law Viva Energy and its Affiliates disclaim all liability to the Customer for loss, damage or injury (including death) resulting from the provision of services by Viva Energy and its Affiliates, except to the extent of any negligence or breach of this contract on the part of Viva Energy.
- e. Subject to clause 11(b), nothing in these Viva Energy Terms & Conditions limits any right, power or remedy the Customer may have under the Australian Consumer Law.

## 12. Direct Debit Arrangements

### Drawing Arrangements

- The Customer acknowledges that, by completing the bank account details and signing the Application, moneys due to Viva Energy will be drawn from the Customer's bank account. Viva Energy will only initiate a drawing when a payment is due from you under these Viva Energy Terms & Conditions.
- If the Due Date falls on a non-Business Day, Viva Energy will draw the amount on the first Business Day before the Due Date, or as agreed in writing by Viva Energy.
- Viva Energy reserves the right to cancel the drawing arrangements at any time and to arrange with the Customer an alternate payment method upon no less than 48 hours prior written notice.

### Customer's Rights

- Subject to the Customer having arranged a suitable alternative payment method under subclause (f)(iv) below, the Customer may, by giving written notice to Viva Energy:
  - terminate the drawing arrangements;
  - stop payment of a drawing; or
  - request changes to the amount or frequency of the drawing, providing Viva Energy receives such notice at least 48 hours days prior to the Due Date.
- The Customer shall immediately give notice to Viva Energy if a drawing has been completed incorrectly.

### Customer's Responsibilities

- It is the Customer's responsibility to ensure that:
  - sufficient funds are available in the bank account to meet a drawing on the Due Date;
  - the authorisation given to draw on the bank account as completed in the Application is identical to the account signing instructions held by the financial institution where the account is held;
  - Viva Energy is advised if the bank account is transferred or closed; and
  - a suitable alternate payment method is arranged if the drawing arrangements are cancelled either by the Customer, the nominated financial institution or Viva Energy.

## 13. Change in Customer details

The Customer must immediately notify Viva Energy in writing of any change to the Customer's name, address and other account details provided in the Application, including any change of director, other office-holder or GST status.

## 14. Commissions

The Customer acknowledges that Viva Energy may give or receive commissions, volume discounts, fees and other benefits in connection with the supply of Goods to the Customer.

## 15. Assignment

Neither party may, assign any of its rights, or transfer by novation any of its rights and obligations under these Viva Energy Terms & Conditions to any person or persons, without the prior written consent of the other party which may be withheld by the other party acting reasonably.

## 16. Variation

Viva Energy reserves the right to vary these Viva Energy Terms & Conditions at any time, in its absolute discretion, by giving the Customer not less than 14 days' notice in writing.

## 17. General

- These Viva Energy Terms & Conditions are governed by the laws in force in the State of Victoria, and any proceedings arising out of these Viva Energy Terms & Conditions shall be determined by a court of competent jurisdiction in that State.
- If these Viva Energy Terms & Conditions are entered into by an agent acting for or on behalf of the Customer, whether such agency is disclosed or undisclosed, then such agent shall be liable (as well as the Customer) not only as agent but also as principal for the performance of all the obligations of the Customer.
- If the Customer carries on business as a trustee, the Customer is bound by the terms and conditions of these Viva Energy Terms & Conditions both as trustee and in its own capacity.

- other organisations to which Viva Energy is required by law, or authorised by us, to disclose our personal information, and subject to the Privacy Act 1988, we consent to the disclosure, use and transfer of our personal information between these organisations, which may be overseas, but only for use in connection with any of the purposes that Viva Energy are authorised to use our personal information.

Subject to the Privacy Act 1988, we acknowledge that we may request to access our personal information collected and held by Viva Energy (and its related bodies corporate and associated entities) by contacting:

By email: [TellVivaEnergy-au@vivaenergy.com.au](mailto:TellVivaEnergy-au@vivaenergy.com.au)  
 In writing: Viva Energy Privacy Officer,  
 GPO Box 872K, Melbourne Vic 3001  
 Telephone: 13 16 18

We authorise Viva Energy to make any enquiries (including obtaining a credit report) concerning our credit worthiness or as to the accuracy of the information provided in this application. We consent to any credit report concerning us being made available to Viva Energy for the purposes of assessing this application for a Viva Energy account. We authorise Viva Energy to use that report or any information derived from that report in assessing this application and for any purposes permitted under the Privacy Act 1988. Further, we authorise Viva Energy to disclose and receive personal information to and from a credit reporting agency, and make such additional checks that Viva Energy deems necessary, for the continued assessment of our creditworthiness. All personal information collected by Viva Energy will be treated in accordance with the Privacy Act 1988 (Cth) and Viva Energy's Privacy Policy (at [vivaenergy.com.au](http://vivaenergy.com.au)), as amended from time to time.

# Privacy Declaration

By applying to Viva Energy Australia Ltd ('Viva Energy') for a Viva Energy account or to act as guarantor in relation to a Viva Energy account, the Customer/Guarantor, as applicable ('we') will be providing personal information to Viva Energy. We acknowledge that this personal information, and any other personal information Viva Energy collects, or has collected about us ('personal information') will be used by Viva Energy to enable it to assess our application for a Viva Energy account or to act as guarantor in relation to a Viva Energy account, and if the application is approved, for the subsequent administration of the Viva Energy account.

We consent to Viva Energy using and disclosing our personal information for this purpose and acknowledge that without this information Viva Energy may be unable to process or accept the application or administer the Viva Energy account.

We consent to Viva Energy (and any of its Australian and overseas related bodies corporate and associated entities) using or disclosing our personal information for each of the following additional purposes:

- performing administrative tasks and managing business operations;
- telling me about products or services of Viva Energy and other organisations;
- product development and research; and
- risk assessment, management and modelling.

We understand that Viva Energy may disclose our personal information, to:

- its related bodies corporate and associated entities;
- other organisations that have the right to use Viva Energy trademarks;
- credit reporting agencies and credit providers;
- organisations providing processing and other support functions to credit providers;
- service providers (including delivery companies, mail houses and debt collectors);
- any programme managers, bonus partners and rewards suppliers involved in any loyalty program associated with Viva Energy; and

# Additional Viva Energy Terms & Conditions For Goods Delivered Over Water

April 2022

Where Goods are delivered over water, these additional Viva Energy Terms & Conditions will also apply and will prevail to the extent of any inconsistency with clauses 1 through to 17 of the Viva Energy Terms & Conditions.

## 1. Definitions

**"Bunkering Commitment"** means a request for the supply of Goods from a Customer.  
**"Commitment"** means a Bunkering Commitment or a Nomination or any other commitment or nomination governed by the Viva Energy Terms & Conditions.  
**"Delivery Port"** means the port or place at which Goods are delivered under a Commitment.  
**"Equipment"** means the Customer's equipment at the Delivery Port.  
**"Nomination"** has the meaning given to that term in clauses 2 and 3 below (as applicable).  
**"Pre-delivery Check List"** means the check list prepared by Viva Energy and signed by or on behalf of Viva Energy and the Customer to confirm agreement on the conditions and procedures under which physical delivery of the Goods shall take place.  
**"Viva Energy Delivery Procedures Manual"** means a manual published and updated by Viva Energy from time to time regarding Delivery procedures and which is made available to the Customer on request.  
**"Viva Energy Ship Quality Assurance Guidelines"** means standards that Viva Energy use to assess whether a vessel is fit to receive Goods in the cargo hulls.  
**"Spot Sale"** means a one-off Commitment for a defined volume of Goods to be delivered at an agreed location on an agreed date at an agreed price.

## 2. Lubricants Nomination Procedure

- 2.1 The Customer or his agent shall give Viva Energy or its designated representative notice (a "Nomination") of a requirement by a vessel for delivery of lubricants specifying grades, quantities, method of delivery and expected date of arrival at a Delivery Port.
- 2.2 In addition to Nominations outlined under the provisions above, a Nomination will be considered as having been made within time when a vessel is supplied with lubricants at a Delivery Port on the authority of the Master of the vessel.
- 2.3 If the vessel has not arrived at the Delivery Port within ten days after the expected date of arrival notified pursuant to the provisions above, the Nomination will be considered as cancelled by the Customer. The Customer shall, in addition to any liability under the Viva Energy Terms & Conditions, be liable to Viva Energy for any expense incurred by Viva Energy as a result of the Nomination. If the vessel arrives earlier than the expected date of arrival notified pursuant to the provisions above, Viva Energy shall exercise reasonable efforts to supply the vessel upon request but shall not be bound to do so until the expected date of arrival.
- 2.4 Where a Nomination gives notice of a requirement by a vessel for delivery in a Delivery Port of grades of lubricants that Viva Energy cannot supply in that Delivery Port from duty-free stocks, Viva Energy may advise the Customer accordingly (which option must be exercised within a reasonable time) and upon such advice the Customer may revise the Nomination. If the Customer does not promptly revise the Nomination the Customer shall be deemed to have requested to be supplied the grades in question from duty paid stocks and the provisions of clause 4(c) below shall apply.

## 3. Fuels Nomination Procedure

The nomination procedure for fuels will be the procedure as notified by Viva Energy to the Customer.

## 4. Additional Charges

In addition to the prices payable for Goods, the Customer must pay the following charges:

- a. any expenses incurred as a result of the Master of the vessel or site operator rejecting the whole or any part of the delivery under a Commitment;
- b. any mooring or unmooring charges or port dues which may be incurred by Viva Energy in connection with any vessel to which Goods are delivered hereunder;
- c. if Viva Energy (not having duty-free stocks available, and the Customer first having been advised

- d. that this is the case) delivers to the Customer from duty paid stocks, the amount of such duty;
- d. any of the additional charges described at clause 10 below as applicable;
- e. additional costs incurred by Viva Energy in respect of deliveries made under the Viva Energy Terms & Conditions, including any Commitment; and
- f. any expenses and delivery costs or charges incurred by Viva Energy as a result of the Customer Site, Delivery Port or the vessel being or being deemed to be unsuitable or unacceptable according to Viva Energy Delivery Procedures Manual (as amended from time to time) in Viva Energy's reasonable opinion.
- g. Form 43s as defined under The Customs Act 1901 – Section 129. Preparation and submission of Form 43's are the responsibility of the receiving vessels master, owner or agent. Viva Energy Australia Pty Ltd as Supplier is not authorised to submit Form 43's or otherwise make application to the Collector of Customs on behalf of the Receiving Vessel. The Supplier shall provide relevant details of Product volume and value to the Buyer or its nominated representative for subsequent preparation and submission of the Form 43 by the Buyer or its nominated representative. In the event that the Buyer requires the Supplier to prepare the Form 43, then the Supplier shall do so for which a charge of AUD100 per Form43 will be payable. The Supplier shall not be responsible for submitting or otherwise making application to a Collector under any circumstance.

## 5. Delivery/Pick up

Where Goods are required to be delivered into a Customer's vessel:

- a. Where such option is available at the Delivery Port, deliveries hereunder shall be made in accordance with instructions given by the Customer or its accredited representative or the Master of the vessel if agreed before commencement of delivery by Viva Energy.
- b. Delivery will be made during Viva Energy's normal working hours unless required at other times and permitted by port regulations, in which event the Customer must (if required by Viva Energy) reimburse Viva Energy for all additional expenses incurred by Viva Energy.
- c. The vessel will be bunkered as promptly as circumstances permit, but Viva Energy shall not be liable for any loss, expense, damage, delay or demurrage whatsoever which may be suffered by the Customer as a result of any delay arising from congestion affecting Viva Energy's facilities, howsoever caused.
- d. Viva Energy shall not be required to deliver into any of the vessel's tanks Goods for the export of which a Government permit is required and has not been obtained by the Customer or the Customer's accredited representative.
- e. For delivery into vessels, unless otherwise agreed the Customer shall not be entitled to receive Goods other than into tanks usually used as the fuel/lubricant bunkers of the vessel to which the delivery is to be made.
- f. The Customer acknowledges that it is the sole responsibility of the Customer or the Customer's nominated representative to notify Viva Energy of any estimated time of arrival deviations associated with the delivery of the Goods. Any changes to the supply of Goods resulting from a deviation, which was not notified, will incur extra cost to the Customer, and the Customer shall indemnify Viva Energy for and against all costs incurred by Viva Energy as a result of the failure to notify Viva Energy of the deviation in the estimated time of arrival.

- g. For bulk Goods delivered by barge, the minimum receiving rates must be in accordance with Clause 10.9. Without limiting any other rights of Viva Energy under these terms and conditions or at law, where these minimum receiving rates are not met, Viva Energy may: (i) charge the Customer additional charges equivalent to the costs incurred by Viva Energy for the additional time taken in excess of time taken based on the minimum receiving rates; and/or (ii) at any time during the bunkering operation terminate the bunkering operation without penalty and the Customer will be required to pay for equivalent to USD50 per metric tonne of the amount short delivered against the Commitment.

## 6. Health, Safety & Environment Requirements

- 6.1a. In any case where delivery is ex-barge, the Customer must provide free of cost to Viva Energy a clear and safe berth for the barge(s) alongside the vessel's receiving lines and the assistance of qualified staff to secure the barge(s) moorings. The receiving vessel should provide a safe access to the barge. This safe access means the use of the accommodation ladder. If the position of the lighter does not fit with the position of the accommodation ladder a pilot ladder should be rigged up. The receiving vessel is responsible for a safe access to and from the lighter. Vessels, including tankers, will be bunkered in turn as promptly as circumstances permit but Viva Energy shall not be liable for demurrage or for any loss, expense, damage or delay due to congestion at the terminal or to prior commitments of available barges, or when in Viva Energy's opinion clear and safe berth or the assistance of qualified staff to secure moorings is unavailable.
  - b. Subject to prior express written permission by Viva Energy to board Viva Energy's delivering vessel (such permission may be withheld at Viva Energy's sole discretion), no person (including any person from the receiving vessel) is permitted on board Viva Energy's delivering vessel at any time before, after or during delivery, for any reason. Viva Energy may refuse access to Viva Energy's delivering vessel until and unless Viva Energy is satisfied that there is and will be safe access.
  - c. Access by independent surveyors to Viva Energy's delivering vessel is subject to Viva Energy's prior express written permission (which may be withheld at Viva Energy's sole discretion). Viva Energy may grant access by water taxi or launch boat if it has been assessed by Viva Energy as safe.
- 6.2 If in the course of any delivery under the Viva Energy Terms & Conditions, including any Commitment there is any escape or spillage of Goods:
  - a. The Customer agrees that, if a Pollution Event occurs before, during or after delivery of the Goods, Viva Energy may at its sole discretion take reasonable steps to control and terminate the Pollution Event, contain and remove the escaped Goods and clean the affected area. The Customer must afford Viva Energy its reasonable co-operation in implementing steps under this clause. If the Pollution Event is caused by an act or omission of the Customer, its servants or agents (other than Viva Energy), the Customer must indemnify Viva Energy for the cost of any steps taken under this clause. In this clause, "Pollution Event" means any occurrence as a result of which the Goods escaped onto or into land or water.
  - b. The Customer must supply Viva Energy with any documents and information concerning the Pollution Event or any programme for the prevention thereof as are requested by Viva Energy or are required by law or regulations applicable at the Delivery Port.
- 6.3 The Customer shall be fully responsible for the proper use, maintenance and repair of the Equipment. The Customer will immediately inform Viva Energy of any defects, ruptures, spills or other problems with or related to the Equipment, which occur during the delivery process.



- 6.4 The Customer must provide ready and safe means of access to the Equipment for delivery of the Goods at the Delivery Port and must not obstruct access to the Equipment for delivery. Delivery will not commence until such time as the Pre-delivery Check List has been jointly and satisfactorily completed and signed by or on behalf of both Viva Energy and the Customer.
- 6.5 Viva Energy and the Customer represent to each other that they are in compliance with all applicable laws and government regulations with respect to the environment and that they have policies of environmental responsibility in place concerning their respective Goods processes.
- 6.6 The Customer acknowledges that it is the sole responsibility of the Customer to provide appropriate, safe and fit for purpose bunker hose connections on its vessel and that Viva Energy has the right to not deliver Goods to the Customer pursuant to a Commitment, if in the opinion of the Viva Energy, such connections have not been made available. In the event that Viva Energy elects, pursuant to this clause 6.6, to not deliver to the Customer, the Customer shall indemnify Viva Energy for and against all costs incurred by Viva Energy as a result of the non-delivery including but not limited to barge charter costs, fuel pump back costs and any additional labour and/or overtime charges. Further, Viva Energy will not be liable for any costs or losses incurred or suffered by the Customer as a result of the election by Viva Energy, pursuant to this clause 6.6, to not deliver Goods to the Customer.
- 6.7 Notwithstanding any other provision in the Viva Energy Terms & Conditions to the contrary, Viva Energy is not obliged to deliver any Goods to the Customer pursuant to a Commitment if in the opinion of Viva Energy the Delivery Port, Customer Site or vessel is or is deemed to be unsuitable according to the Viva Energy Delivery Procedures Manual (as amended from time to time).
- 6.8 The Customer acknowledges that approval must be obtained from Viva Energy prior to deliveries into a vessel's cargo hull. Approval can only be granted after Viva Energy or its agent has conducted an inspection. Viva Energy, or its agents, will conduct such inspection using the Viva Energy Ship Quality Assurance Standards as amended from time to time. Viva Energy has the right not to deliver Goods to the Customer pursuant to a Commitment if such approval has not been obtained.
- 6.9 The Customer acknowledges that it is the sole responsibility of the Customer to ensure that the Delivery Port is suitable for road tanker deliveries and to notify Viva Energy of any special conditions applying at the Delivery Port in relation to road tanker deliveries. If Viva Energy is not able to deliver Goods by road tanker or if the facilities available at the Delivery Port are or are deemed to be unsuitable according to the Viva Energy Delivery Procedures Manual (as amended from time to time) for delivery by road tanker, Viva Energy has the right to not deliver Goods to the Customer pursuant to a Commitment. In the event that Viva Energy elects, pursuant to this clause 6.9, to not deliver to the Customer, the Customer shall indemnify Viva Energy for and against all costs incurred by Viva Energy as a result of the non-delivery including but not limited to fuel pump back costs and any additional labour and/or overtime charges. Further, Viva Energy will not be liable for any costs or losses incurred or suffered by the Customer as a result of the election by Viva Energy, pursuant to this clause 6.9, to not deliver Goods to the Customer.
- 7. Risk & Title**
- 7.1 Property in and risk of the Goods supplied to the Customer shall pass from Viva Energy to the Customer:
- in the case of bulk Goods, as the Goods pass the flange connecting the delivery facilities provided by Viva Energy with the receiving facilities provided by the Customer; and
  - in the case of packed Goods, at the time of delivery to the vessel or other delivery location (which for the avoidance of doubt in relation to Goods delivered on pallets will be deemed to have occurred at the time the pallets are made ready for off-loading at the relevant location by the vehicle driver).
- 7.2 The responsibility for connecting the delivery facilities provided by Viva Energy to the receiving facilities provided by the Customer shall be in accordance with the custom of the Delivery Port.
- 8. Measurement/Quantity and Samples/Quality Claims**
- 8.1 The quantity of Goods delivered shall be measured and calculated in accordance with the ASTM –IP Petroleum Measurement Tables or the methods of any other recognised standards authority at the discretion of Viva Energy.
- 8.2 For bulk fuel Goods only, Viva Energy shall take four primary samples of each grade of bulk fuel delivered from which Viva Energy shall take two representative samples. The Customer or Customer's accredited representative shall be at liberty to witness the sampling. Three of these samples are taken for quality purposes ("quality samples"). The fourth sample is known as the MARPOL Control Sample. One sealed quality sample and the MARPOL Control Sample shall be handed to the Master of the vessel receiving the Goods and the other two quality samples retained by Viva Energy for a 30 day period or the minimum period allowable under applicable law, whichever is the longer, from the date of delivery in a safe place where they will not deteriorate. At the end of the said period the remaining quality samples may be discarded unless the Customer has made a complaint or claim within the said period, in which case one of the samples shall be retained by Viva Energy for its own use and the other sample shall be retained by Viva Energy for analysis by the expert referred to in clause 8.3 below.
- 8.3 Any dispute as to quantity or quality of Goods delivered under a Commitment shall, save for in instances of manifest error or fraud, be determined finally and conclusively by an expert appointed jointly by the Customer and Viva Energy or, if they cannot agree to such an appointment, then an expert appointed by the President for the time being of the Institute of Petroleum in Australia. Save that, any dispute relating to analytical results after receipt of product / bunkers, the procedures described in EN ISO 4259 for resolving the dispute, and interpretation of the results based on the test method precision, shall apply. Viva Energy will not settle disputes on the basis of a single analytical result for any product supplied.
- 9. Restrictions**
- 9.1 To the extent that Goods are sold or to be sold to the Customer on a duty or tax exempt basis, the Customer must comply with all local requirements and must execute all such documents necessary to permit the sale on such basis, including any declarations on use of the Goods. To the extent that a claim is made by any authorities against Viva Energy on the basis that such Goods was liable for duty or taxes and such claim arose partly or wholly due to the action, omission or fault of the Customer (including any use of Goods in domestic waters), then the Customer shall indemnify Viva Energy against any claims, losses, costs, damages, liabilities, fines, penalties and expenses attributable to such action, omission or fault of the Customer.
- 9.2 Unless otherwise agreed the Customer represents and warrants that the Marine lubricants supplied will be used solely for the lubrication requirements of the vessel to which they are delivered or of other vessels owned or managed by the Customer.
- 10. Spot Sale Special Conditions**
- 10.1 **Application:** This clause 10 applies to Spot Sales. Where there is any inconsistency between this clause 10 and the other terms of the Viva Energy Terms & Conditions the terms of this clause 10 shall apply.
- 10.2 **Price:** The price payable by the Customer shall be based on delivered volume of 10%+/- of the order volume confirmed by Viva Energy ("**Confirmed Volume**"). Where the delivered volume is less than the Confirmed Volume, Viva Energy reserves the right to charge the Customer any cost incurred as a result of the failure to accept the Confirmed Volume. Where the Customer subsequently revises their order volume and so their revised Confirmed Volume is in excess of 10% of the original Confirmed Volume, Viva Energy reserves the right to recover the cost of the excess volume delivered. The cost of the excess volume delivered will include the price of the excess volume and any cost incurred by Viva Energy associated with the transport, delivery and other arrangement required to supply the excess volume to the Customer.
- 10.3 Delivery Window and Validity:** The Delivery Window is 48 hours on either side of 12.00pm, on the date agreed in the Commitment between Buyer and Viva Energy. For arrival outside of this time period, Viva Energy will use its best endeavours to commence deliveries in accordance with the Customer's disclosed preference. Viva Energy may commence a delivery at any time within the delivery window at its sole discretion and without penalty. In the event that the Buyer vessel is not available to be supplied within the Delivery Window, Viva Energy may at its sole discretion and without penalty cancel the Commitment. Viva Energy also reserves the right to revise the price for deliveries made outside the delivery window.
- 10.4 Currency:** Sale of Goods to the Customer is made in AUD\$ per litre for duty applicable deliveries (unless otherwise specified). It is the sole responsibility of the Customer to provide suitable evidence to Viva Energy of the duty free status of any bunker sale. Failure to do so may result in duty, excise and any other applicable tax, levy or government charge being charged with respect to the sale ("**Duty**"), and in such instance: (a) the Duty shall be added to the price and be payable by the Customer; and (b) Viva Energy shall not be liable to subsequently refund any such tax, duty, excise, levy or government charge to the Customer.
- 10.5 Taxes:** Viva Energy will provide Buyers with the Australian Tax Office Commercial Guide for Bunker Fuel and Commercial Shipping (the Guide). When placing orders Buyers will make a declaration to Viva Energy advising the Tax status of the bunker based on their reading and understanding of the guide. Viva Energy will rely on this declaration when confirming the order and for invoicing of the bunker sale. The onus for proving the Tax status will sit solely with the Buyer. In the event that a Buyer wishes to change the Tax status after the issue of the invoice by Viva Energy, the Buyer must make a new declaration basis their understanding of the Guide. Viva Energy will charge an invoice cancellation and re-issue administration charge equivalent to USD50/Invoice in this event.
- 10.6 Conversions:** For the purpose of calculating Excise where applicable the following conversions rates will apply:  
MGO: 1183 Litres to a MT  
MFO: 13031 Litres to a MT  
VLSFO: 1123.596 Litres to a MT
- 10.7 Delivery details:** Supply of the Goods is made on the basis that all bunkers must be delivered into the ship's bunker tanks/lines and not cargo tanks, unless otherwise confirmed by Viva Energy together with a CoBRA confirmation number by Viva Energy. Delivery in all cases shall be made subject to safe bunkering practices as determined by Viva Energy or its agents at its sole discretion. Where product quality is a concern this must be communicated to Viva Energy by the Customer at the time Customer places an order for Goods (i.e. a Commitment) and the Commitment shall then be subject to the Goods in accordance with the specifications (at clause 10.10 below) at the time of delivery.
- 10.8 Cargo Operations**
- Geelong deliveries:** For all barge deliveries made ex. Geelong, minimum delivery required will be 250MT, smaller deliveries may be made at Viva Energy's sole discretion.
  - Melbourne deliveries:** Deliveries can be completed 24/7.
  - Sydney deliveries:** Deliveries can normally only be conducted in daylight hours. The Port at its sole discretion may grant a night bunkering permit upon application on a case by case basis. All night time bunkers will incur overtime charges.
  - Port Botany deliveries:** Deliveries cannot be made if conditions exceed the following voyage parameters: Sea state/Swell for passage (as published on Sydney Ports website): [http://www.sydneyports.com.au/port\\_operations/wave\\_wind\\_and\\_tide](http://www.sydneyports.com.au/port_operations/wave_wind_and_tide)
    - significant wave height: maximum 2 meters (as measured at Botany Bay offshore buoy)
    - average wave period: greater than 3 seconds
  - Botany Bay:** Latest departure time of the Barge from Botany Bay is 1700 hours. Viva Energy reserves the right to charge the Customer overtime charge for departures of the Barge from Botany Bay after 1700 hours.

- f. **Dampier:**
- i. Due to Viva Energy's Workplace Agreement Policy, bunkermen can only work a maximum of 12 hours per day in Dampier. Because of this, deliveries should commence and conclude at the times agreed by both parties to avoid short deliveries. Viva Energy shall not be liable for any short deliveries resulting from any delays to bunkering operations outside the direct control of the bunkermen.
  - ii. Orders must be confirmed in writing to Viva Energy by the Customer before 11.00am Eastern Standard Time of the previous working day of delivery. Quantities delivered need to be within +/-5% range of the confirmed volume. If any quantity change or cancellation needs to be made by the Customer, written notification of at least 24 hours prior to the confirmed ETA must be provided to Viva Energy. If notice of the quantity change is received within 24 hours prior to the confirmed ETA, Viva Energy reserves the right to impose an additional charge of up to 10% of the value of the ordered volume or if the variation is for an increased volume, the total ordered quantity inclusive of the additional volume. Confirmed orders will not be split across 2 days (unless mutually agreed by Viva Energy and the Customer upon the Customer's placement of the order).
- 10.9 Receiving rate: For barge deliveries, the Customer must notify Viva Energy, if the minimum-receiving rate of the receiving vessel is less than 350MT per hour for fuel oil, including HSFO380/180 and VLSFO, and 100MT per hour for marine gas oil. For bunkers of multiple products e.g. HSFO and MGO, then the overall average receiving rate shall not be less than 250MT/hour.
- 10.10 Specifications:
- a. MFO 380 Viva Energy Product Specifications (Australia) (supplied by Viva Energy) meets the requirements of ISO 8217:2010 (F) Grade RMG 380.
  - b. MFO180 Viva Energy Product Specifications (Australia) (supplied by Viva Energy) meets the requirements of ISO 8217:2010(F) Grade RMG 180.
  - c. MGO Viva Energy Product Specifications (Australia) (supplied by Viva Energy) meets the requirements of ISO 8217:2010(F) Grade DMA.
  - d. Very Low Sulphur Fuel Oil. Viva Energy Product Specifications (Australia) (supplied by Viva Energy) are available on request.
- 10.11 Overtime and delay charges: The following additional charges apply.
- a. Without limiting any other rights of Viva Energy under these terms and conditions or at law, where these minimum receiving rates are not met or the delivery period is likely in Viva Energy's opinion to exceed 5 hours, Viva Energy may:
    - i. charge the Customer additional charges equivalent to the higher of: US\$1000/hour; and the actual costs incurred by Viva Energy for the additional time taken in excess of time taken based on the minimum receiving rates or in excess of the 5 hour period; and/or
    - ii. at any time during the bunkering operation terminate the bunkering operation without penalty and the Customer will be required to pay for equivalent to USD50 per metric tonne of the amount short delivered against the volume ordered by the Customer and any costs incurred by Viva Energy with respect to the resupply of the product to the Customer.
  - b. For all deliveries effected by Barge: If the relevant vessel is delayed other than due to breach of these terms and conditions by Viva Energy, or they the Customer fails to take the whole amount confirmed volume, Viva Energy has the right charge the Customer the higher of \$2,500 or actual costs incurred with respect to the delay (and including any redelivery of the Product) if the actual costs exceeds \$2,500.

- c. For deliveries not effected by Barge if relevant vessel is delayed other than due to breach of these terms and conditions by Viva Energy, or they the Customer fails to take the whole amount confirmed volume, Viva Energy has the right charge the Customer the higher of US\$500 or actual costs incurred with respect to the delay (and including any redelivery of the Product) if the actual costs exceeds US\$500.
- 10.12 Cancellation Policy: In the event that the Customer cancels a Bunkering Commitment, Viva Energy reserves the right to apply a cancellation fee based on the following scale:  
 Cancellation >7 days prior to receiving vessel ETA : no fee  
 Cancellation <7 days and >5 days prior to receiving vessel ETA : Up to USD25/MT  
 Cancellation <5 days and >3 days prior to receiving vessel ETA : Up to USD40/MT  
 Cancellation <3 days prior to receiving vessel ETA : Up to USD50/MT  
 Days notice is based on Calendar days. Volume based on contracted committed volume as agreed in the Bunkering Commitment.
- 10.13 Conversion of Local Charges from Local Currency to USD: Where additional charges are incurred in a currency other than USD, the other charges shall be converted to USD using the daily Hedge Settlement rate published by Reuters applicable on the day of delivery. Where the delivery commences on a day where no Reuters Hedge Settlement rate is published (Eg weekends or public holidays) then the prior working day quote shall apply.

## elInvoice Terms and Conditions

For Term Customers.

### 1. Scope

- 1.1 These Terms and Conditions apply to use of the Viva Energy Australia elinvoice web programme (elinvoice) 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 elinvoice access, by selecting the 'I accept' option in accordance with Clause 11, or by signing a Supply Agreement which incorporates these Terms and Conditions (Customer).
- 1.2 These Terms and Conditions operate in addition to the Viva Energy Terms and Conditions and any other document forming part of the contractual relationship between Viva Energy and the Customer (Viva Energy Contract) and any policies, disclaimers, provisions, acknowledgements or other statements which appear on elinvoice which are acknowledged or agreed to by the Customer or any of its elinvoice 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. Viva Energy Contract;
  - b. these Terms and Conditions; and
  - c. any policies, disclaimers, provisions, acknowledgements or other statements which appear on elinvoice and which are acknowledged or agreed to by the Customer or any of its elinvoice Authorised Users at any time.

### 2. Variation of These Terms & 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 elinvoice.

### 3. Operation & Ownership of elinvoice

- 3.1 The Customer acknowledges that elinvoice may be operated for Viva Energy by a third party as a subcontractor and that the computer systems on which elinvoice and the underlying databases are stored may be located overseas.

- 3.2 The Customer agrees and acknowledges that elinvoice and the copyright in all materials on elinvoice, including but not limited to all text, information, graphics, animation, images, software and any other materials on elinvoice (Content) and the arrangement of this Content are owned by or licensed to Viva Energy. The Viva Energy trade marks on elinvoice and any other names, images and logos identifying Viva Energy are proprietary trade marks of Viva Energy or an affiliate of Viva Energy. The Shell trade marks on elinvoice and any other names, images and logos identifying Shell and its products and services are proprietary trade marks of an affiliate of Royal Dutch Shell plc. The names and logos of other companies and products mentioned on elinvoice 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 elinvoice site at any time, or suspend the operation of elinvoice for support or maintenance work or for any other reason, at any time without liability for any such change or suspension.

### 4. elinvoice Authorised Users

- 4.1 During the registration process, the Customer may apply for access rights for 1 or more authorised users to elinvoice (elinvoice Authorised Users) so the elinvoice Authorised Users can access elinvoice to view copies of documents relating to the Customer's Viva Energy account(s), where available.
- 4.2 The Customer can apply to Viva Energy to vary its elinvoice Authorised Users or to add additional elinvoice 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 elinvoice Authorised Users of the Customer and may reject any application from the Customer for an elinvoice Authorised User to be given access to elinvoice.
- 4.4 The Customer must ensure that the elinvoice 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 elinvoice Authorised Users.

### 5. Login ID & Password

- 5.1 Viva Energy will issue the Customer with a login ID and Password for each of its elinvoice Authorised Users to enable the elinvoice Authorised Users to access elinvoice to the extent requested by the Customer. Viva Energy may, at its discretion, provide the elinvoice Authorised Users with the ability to set their own login ID and Password within elinvoice. Viva Energy reserves the right to change or to request the Customer to change the Customer's or elinvoice 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 elinvoice Authorised Users do not permit, any other person to access elinvoice using the Customer's or an elinvoice 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 an elinvoice 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 & 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, Password issued to the Customer or an elinvoice Authorised User. The Customer accepts full responsibility for all transactions thus made.

## 7. Use of elnvoice

- 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 elnvoice. The Customer may download any Content on elnvoice for which express permission has been given (e.g. online reports and statements) solely to the Customer's or its elnvoice Authorised Users' computers for the Customer's use. The Customer undertakes that it will not:
- alter or remove any copyright, trade mark or other proprietary notice of Viva Energy or of any other company operating elnvoice;
  - modify, frame or edit the Content of elnvoice or publish or sell the Content including but not limited to making the Content available on any other website;
  - reverse, engineer, translate, adapt or modify any software used in connection with elnvoice;
  - create any links from any other website to elnvoice without Viva Energy's express prior written permission;
  - use any Content copied from elnvoice for any business, commercial or public purpose (other than as specifically authorised in these terms and conditions); or
  - interrupt, interfere or attempt to interrupt or interfere with the operation of elnvoice in any way.
- 7.2 The Customer uses the elnvoice site entirely at its own risk. Viva Energy reserves the right to deny the Customer or an elnvoice Authorised User access to elnvoice at any time or to terminate elnvoice 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 elnvoice at any time.
- 7.3 The Customer may not do anything to interfere or attempt to interfere with the proper working of elnvoice or the operation of networks connected to elnvoice.
- 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 elnvoice from time to time.

## 8. Status of Information

Viva Energy and the Customer agree and acknowledge that any billing information, reports or other information posted in elnvoice or generated by elnvoice 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.

## 9. Privacy & Data Protection

- 9.1 The Customer acknowledges that it has read and understood the Viva Energy Australia 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 13 - 17 when completing the application for elnvoice access and the Customer warrants that each elnvoice 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 13 - 17.

## 10. Warranties, Liabilities & Indemnities

- 10.1 Where the law applies guarantees, warranties or conditions into the provision of access to the elnvoice 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,

- 10.2 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.
- 10.3 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:
- loss of profits, income, revenue, contracts or production;
  - business interruption or increased costs in operation;
  - damage to goodwill or reputation;
  - damage to equipment or machinery; or
  - 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.
- 10.4 The Customer acknowledges that:
- Viva Energy may send items of software, code or programming (Cookies) to, and store Cookies on, the Customer's and the elnvoice Authorised Users' computer systems in the course of the Customer and the elnvoice Authorised Users accessing elnvoice;
  - a virus or other malicious code may be transmitted to the Customer's and the elnvoice Authorised Users' computer systems in the course of accessing elnvoice; and
  - Viva Energy cannot guarantee the security of elnvoice and a third person may intercept any messages or information that are sent to or from elnvoice, 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 elnvoice Authorised Users' computer systems or any unauthorised access to the Customer's information (whether occurring during access to elnvoice by the Customer or an elnvoice Authorised User or at any other time).

## 11. Acceptance of Terms & Conditions

In addition to signing the application for elnvoice access, by selecting the 'I accept' option at the end of these Terms and Conditions the Customer and each elnvoice Authorised User agrees that, when using the elnvoice site, the Customer/elnvoice Authorised User is bound by, and will comply with, the Terms and Conditions, as amended from time to time.

## 12. General

- 12.1 The Customer may discontinue its use of elnvoice at any time by using the mechanism provided in the elnvoice web programme or by notifying Viva Energy. The contract formed by the application for elnvoice 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.
- 12.2 Viva Energy may terminate or suspend the Customer's access to all or part of elnvoice, 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 elnvoice if it ceases to have a Shell Contract with Viva Energy.

- 12.3 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.

- 12.4 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.
- 12.5 These Terms and Conditions are (subject to any express provisions in a Viva Energy 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.

## 13. 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).

## 14. 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).

## 15. Storage & 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.

## 16. Third-Party Internet Sites & 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.

## 17. Contact Us

If you have any questions regarding the Viva Energy Privacy Policy or Clauses 13 - 17, or if you would like more information regarding the way Viva Energy manages personal information, then please contact Viva Energy:

By email: [tellvivaenergy-au@vivaenergy.com.au](mailto:tellvivaenergy-au@vivaenergy.com.au)

In writing:  
Viva Energy Privacy Officer  
GPO Box 872, Melbourne Vic 3001

Telephone: 13 16 18