

## About this document

These General Terms and Conditions (Aviation Fuel) apply to any Order placed by the Customer with Viva Energy for:

- Aviation Fuel and related goods and services supplied by Viva Energy to the Customer; and
- to the extent applicable for any credit facility provided by Viva Energy to the Customer,

unless the Customer and Viva Energy have signed a separate term supply contract for Viva Energy to supply such goods and/or services for an agreed period (**Term Supply Contract**), in which case the Term Supply Contract shall apply instead for the agreed period

## 1. Acceptance of Terms and Conditions

1.1 These General Terms and Conditions (Aviation Fuel) (**Aviation GTCs**) apply to:

- any Order placed by the Customer with Viva Energy for Aviation Fuel; and
- the extent applicable for any credit facility provided by Viva Energy to the Customer.

1.2 Unless the Customer and Viva Energy have signed a separate Term Supply Contract for Viva Energy to supply the Customer Aviation Fuel for an agreed period:

- these Aviation GTCs 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; and
- Viva Energy has no obligation to accept any Order from the Customer or issue any Sale Confirmation and (unless expressly agreed to the contrary) the Customer has no obligation to place Orders with Viva Energy.

1.3 In the event of any inconsistency between the terms of:

- any Sale Confirmation;
- separate signed agreement made between Viva Energy and the Customer; and/or
- these Aviation GTCs,

then the order of documents (a) to (c) shall be applied to resolve the inconsistency to the extent of the inconsistency.

## 2. Definitions

In these Aviation GTCs unless the context otherwise requires:

Word(s)	Meaning
<b>Affiliate</b>	means a related body corporate as that term is defined in the Corporations Act 2001 (Cth)
<b>Aviation Fuel</b>	means AvGas, Jet A-1 or Jet Plus.
<b>Aviation GTCs</b>	means these General Terms and Conditions of Sale for Aviation Fuels.
<b>Business Day</b>	means any day other than a Saturday, Sunday or public holiday in Melbourne, Victoria.
<b>Consequential Losses</b>	means 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 Aviation Fuel (in each case whether direct or indirect and 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) and any consequential, indirect, exemplary, special or punitive loss or damage of any kind, in each case whether caused by breach of contract, warranty, tort (including negligence), product liability, contribution or strict liability.
<b>Customer</b>	means the entity (including affiliates and Delegates of that entity) set out in the Application to whom Viva Energy is supplying Aviation Fuel.

Word(s)	Meaning
<b>Customer's Aircraft</b>	means aircraft owned, leased or operated by or on behalf of the Customer.
<b>Defuel</b>	means to remove fuel from aircraft tanks irrespective of the circumstances or the quantities involved.
<b>Delegates</b>	means associates, Affiliates, representatives, sub-contractors, directors, officers, employees, agents or volunteers.
<b>Deliverer</b>	means the entity authorised by Viva Energy to supply Aviation Fuel at the relevant Delivery Airfield.
<b>Delivery Airfield</b>	any airfield: (a) at which the Customer uplifts Aviation Fuel upon presentation of a Fuel Card, using cash or any credit charge or debit card accepted by Viva Energy; or (b) in respect of which the Customer places an Order and Viva Energy issues a Sale Confirmation.
<b>Force Majeure Event</b>	means the occurrence of an event or circumstance or series of events of circumstances beyond a party's reasonable control that prevents a party from performing one or more of its contractual obligations under this Agreement and without limiting the above the following specific events shall be deemed to be beyond a party's control and to constitute a Force Majeure Events: (a) actual, threatened or reported war, act of war, civil war or hostilities; (b) act of terrorists; act of hostility or malicious damage; (c) blockade, generally imposed trade restriction, embargo; (d) act of government or public authority whether lawful or unlawful, compliance with any law or governmental order, expropriation, seizure of works, requisition, nationalisation which did not exist at the time of signing these Aviation GTCs; (e) plague, epidemic, pandemic; (f) act of God, natural disaster or extreme natural event such as earthquake, landslide, flood, or extraordinary weather condition; (g) explosion; fire; destruction of equipment; destruction of port or terminal facilities; obstruction of waterways, road access or other means of transport; cyber security incident; break-down of transport, communication, information system or power supply; (h) ionising radiation or contamination by radioactivity, chemical or biological contamination; (i) labour disturbance such as boycott, strike and lock-out, occupation of factories and premises.
<b>Fuel Card</b>	means a card that evidences that the Customer has an account with Viva Energy for use to uplift Aviation Fuel on trade credit subject to the terms of these Aviation GTCs or any other executed agreement made between the parties from time to time.
<b>Order</b>	means any order (whether verbal or in writing) placed by the Customer for the Aviation Fuel.
<b>Posted Airfield Price</b>	means the standard price for Aviation Fuel quoted by Viva Energy or a Delivering Entity at a Delivery Airfield
<b>Sale Confirmation</b>	means any documentation which may be issued by Viva Energy to confirm the sale and supply of Aviation Fuel pursuant to an Order (including an invoice).
<b>Viva Energy</b>	means Viva Energy Aviation Pty Ltd (ABN 29 167 761 453).

## 3. Aviation Fuel

# General Terms and Conditions (Aviation Fuel)



## Quality

3.1 Viva Energy warrants that Aviation Fuel supplied to the Customer pursuant to these Aviation GTCs shall meet one of the following specifications, as set forth in the relevant Order and Sale Confirmation accepted between the parties:

Aviation Fuel Type	Specifications
Kerosene Type Jet Fuel	Grade Jet A-1: the latest issue of: (a) Aviation Fuel Quality Requirements for Jointly Operated Systems ( <b>AFQRJOS</b> ) also known as "AFQRJOS Checklist". (b) British Ministry of Defence Standard DEF STAN 91-091 for Turbine Fuel, Kerosene Type, Jet A-1, NATO Code F-35, Joint Service Designation. (c) ASTM Standard Specification D1655 for Aviation Turbine Fuel "Jet A-1". (d) Canadian specification Can/CGSB-3.23. (e) GOST R 52050 - Grade GOST 10227 - Grades TS-1 and RT. (f) Chinese No.3 Jet Fuel according to GB6537.
Aviation Gasoline	Grades 100/100LL: the latest version of: (g) British Ministry of Defence Standard DEF STAN 91-090 Standard Specification for Aviation Gasoline, ASTM D910. (h) Canadian specification Can/CGSB-3.25.
	Grade UL82: the latest issue of ASTM D6227 standard specification for Unleaded Aviation Gasoline

3.2 All other warranties (express or implied) with respect to the description, merchantability or quality of the Aviation Fuel or its fitness for any purpose are expressly excluded to the fullest extent permitted by applicable law. Viva Energy may from time to time make such changes to the Aviation Fuel specification to the extent reasonably necessary to comply with any applicable safety or statutory requirements or to follow any revision to the specification made by the organisation responsible for publishing that specification (but only to that extent).

3.3 The Customer confirms that Aviation Fuel acquired by the Customer pursuant to these Aviation GTCs shall only be used for consumption in Customer's or where the Customer is a reseller in the end-customer's aircraft.

## Inspection

3.4 Subject to approval by applicable authorities, the Customer may, at its own expense, take samples, inspect or test, to the extent practicable, at the time of delivery, any Aviation Fuel purchased pursuant to these Aviation GTCs prior to accepting delivery of such Aviation Fuel. Samples, inspection and testing shall be carried out in accordance with internationally recognised methodologies and practices. If requested by the Customer, Viva Energy shall provide a hydrometer and a thermometer for the Customer to determine the density of a sample from a particular fuelling. At the Customer's request, Viva Energy will provide a typical density, determined at an observed temperature, for Aviation Fuels supplied to the Customer based on other supplies made by Viva Energy on that day. This value may vary from time to time and Viva Energy accepts no responsibility for the accuracy of calculations made by the Customer based on such information provided by Viva Energy.

3.5 If any Aviation Fuel does not conform to the specifications set forth in these Aviation GTCs or other written agreement, Customer may, by prior written notice to Viva Energy, either reject such Aviation Fuel or require its correction. Aviation Fuel that does not conform to applicable specifications shall be corrected or removed at the expense of Viva Energy after receiving written notice of non-conformity; provided that Viva Energy shall be given the opportunity to inspect such non-conforming Aviation Fuel and that such Aviation Fuel has not been altered, combined with other products, stored or used in violation of applicable industry standards. Removal of Aviation Fuel under any other circumstances shall be at Customer's sole expense. In no event shall claims of

non-conformity for quality, quantity or otherwise be accepted more than fifteen (15) Business Days after the date of the alleged defect coming to the attention of the Customer (or such date that it would have become apparent to the Customer had the Customer made reasonable enquiries and/or carried out reasonable inspections and/or taken reasonable samples).

## Quantities

- 3.6 Viva Energy's measurement shall be accepted as prima facie evidence of the quantities of Aviation Fuel delivered, but the Customer is entitled to check the accuracy of instruments used by Viva Energy on reasonable notice during Viva Energy's normal operating hours in the presence of Viva Energy's representative. Determinations of quantities made in accordance with international industry practice shall be binding.

## Discrepancies

- 3.7 Without prejudice to clause 3.2 and subject to clauses 3.4 and 3.6, the Customer may bring a claim against Viva Energy in respect of:
- (a) the quality of the Aviation Fuel delivered by Viva Energy under these Aviation GTCs provided that:
    - (i) the Customer gives notice to Viva Energy of such claim within 15 Business Days of the alleged defect coming to the attention of the Customer;
    - (ii) the Customer uses its reasonable endeavours to minimise loss or damage arising from any alleged quality defect; and
    - (iii) Viva Energy is given reasonable opportunity to take samples, inspect and test the quality of the Aviation Fuel in respect of which the claim is based.
  - (b) the quantity of the Aviation Fuel stated on any delivery document or invoice compared to the amount actually delivered to the Customer provided that the Customer has notified Viva Energy of such discrepancy within 15 Business Days of delivery.

## 4. Delivery

### Supply and lifting

- 4.1 Aviation Fuel shall be supplied from a supply location chosen by Viva Energy. If agreed by Viva Energy and the Customer in writing prior to delivery, Aviation Fuel may be delivered into or lifted from a fuel facility at the relevant Delivery Airfield.

### Delivery into Aircraft

- 4.2 Unless otherwise agreed by both parties, Aviation Fuel supplied pursuant to these Aviation GTCs shall be delivered into Customer's Aircraft in accordance with Viva Energy's into-plane fuelling and quality control policies and procedures.
- 4.3 Provided the Customer's Aircraft arrives at its scheduled flight time Viva Energy shall use all reasonable endeavours to refuel the Customer's Aircraft promptly.
- 4.4 If the Customer requests Viva Energy to deliver by a different method than the one normally used for supply of Aviation Fuel to the Customer's Aircraft then, subject to clause 5 and such method being determined by Viva Energy to be safe (having regard to applicable internationally recognised industry standards), then Viva Energy may charge the Customer additional costs and expenses Viva Energy incurs as a result of making such deliveries.
- 4.5 If the Customer's Aircraft is operating:
- (a) a scheduled flight that arrives before or after its scheduled time of arrival, Viva Energy shall use its reasonable endeavours to fuel the aircraft promptly, subject to operational requirements imposed by other delivery commitments at the aircraft's actual time of arrival; or
  - (b) a non-scheduled flight, Viva Energy shall use its reasonable endeavours to fuel the aircraft promptly, subject to operational requirements imposed by delivery commitments either to aircraft operating scheduled flights at the time of arrival of the aircraft or to other aircraft operating irregular, non-scheduled flights that have arrived before the aircraft.

### Delivery into fuel facility

- 4.6 Where Viva Energy has agreed to supply Aviation Fuel into static or portable fuel storage tanks, facilities or other installations, the Customer confirms that:
- (a) Viva Energy may make deliveries of Aviation Fuel by such means of delivery and in such tanks or other containers as Viva Energy may select.

- (b) The Customer shall coordinate, cooperate and communicate with Viva Energy so that Viva Energy can plan its deliveries efficiently and to ensure the Customer is able to provide Viva Energy with sufficient access to the tanks, facilities or other installations as applicable. 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.
- (c) Deliveries shall be made at such place as Viva Energy and the Customer agree.
- (d) Where the Customer gives Viva Energy adequate notice of the Customer's specific requirements of Aviation Fuel (which notice must not be less than Viva Energy's lead time for the particular Aviation Fuel (as notified by Viva Energy to the Customer from time to time), Viva Energy will use reasonable endeavours to deliver (or make available for pick up if applicable) pursuant to the Order and Sale Confirmation, subject to Viva Energy's delivery schedule applicable from time to time.
- (e) The quantity of Aviation Fuel actually supplied may vary from the quantity ordered by the Customer by up to +/-5% Viva Energy will charge the price for the quantity supplied.
- (f) A suitable and safe bulk storage facility will be provided (including any assistance required and suitable hose connections) which complies with all applicable legal and regulatory requirements for the Aviation Fuel delivery without risk to property and persons.
- (g) At the time of delivery there will be sufficient capacity in that facility for the safe and proper reception of the quantity of the Aviation Fuel ordered and any connecting hose will be properly and securely fitted to the receiving filling point; the Customer will accept responsibility for any loss, leakage or contamination of the Aviation Fuel deliverable pursuant to these Aviation GTCs which may occur or in respect of any such facility, pipelines or equipment as a result of a breach by the Customer of its obligations under these Aviation GTCs.
- (h) The Customer is responsible for ensuring the observance of all regulations laid down by any governmental or other competent authority in respect of the avoidance of smoking, naked lights, fires, stoves or heating appliances of any description in the vicinity of any Aviation Fuel storage facility and the fill, dip and vent pipes connected to it.
- (i) The Customer takes responsibility for any loss, leakage or contamination of the product deliverable which may occur in any tank or in any pipeline or equipment of the Customer.
- (j) All storage installations will be clearly and correctly labelled with the description of the grade of Aviation Fuel stored and the tank capacity.
- (k) If the Customer requests Viva Energy to make deliveries:
  - (i) at an area at any Delivery Airfield other than the areas usually and regularly used by the Customer for the uplift of Aviation Fuel; or
  - (ii) outside Viva Energy's normal service hours,then Viva Energy may charge the Customer additional costs and expenses Viva Energy incurs as a result of making such deliveries.
- (l) If the Customer requests Viva Energy to supply fuel related, tanks or other fuel storage equipment or facilities (**Equipment**) for the Aviation Fuel then, unless Viva Energy expressly agrees otherwise in writing:
  - (i) Viva Energy owns the Equipment and retains title to it at all times. The Customer is not entitled to offer, sell, assign, sub-let, charge or otherwise deal with the Equipment in any way; and
  - (ii) Viva Energy's standard terms applicable to supply/hire/use of equipment apply in respect of the Customer's use of the Equipment, a copy of which is published on Viva Energy's website at <http://www.vivaenergy.com.au/quick-links/customer-terms-conditions> as amended and updated from time to time.

## *Delivery in barrels/drums*

- 4.7 Where Aviation Fuel is deliverable in barrels, drums or other packages and delivery is to be made in such packages, it will be made, at Viva Energy's election, to any point served by transportation appropriate for such delivery.

## *Delivery by pick up*

- 4.8 If Viva Energy permits the Customer to pick up Aviation Fuel 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.
- 4.9 The Customer agrees and acknowledges that in the absence of fraud or manifest error use of a gantry electronic swipe card by the Customer as shown in Viva Energy's records shall be conclusive evidence of delivery to the Customer.



# General Terms and Conditions (Aviation Fuel)

## Delivery over water

4.10 If delivery is to be made to vessels, then Viva Energy's specific marine terms and conditions will apply, as published at <http://www.vivaenergy.com.au/quick-links/customer-terms-conditions>, as amended and updated from time to time.

## Title and risk

4.11 Risk and title in the Aviation Fuel shall pass from Viva Energy at the time of delivery to the Customer by reference to the following delivery points:

Delivery arrangement	Delivery point
<b>Delivery into aircraft (including ex-hydrant)</b>	(a) as the Aviation Fuel passes the inlet coupling of the receiving Customer's Aircraft; or (b) if the Customer has made its own arrangement for the delivery of fuel into the Customer's Aircraft as the Aviation Fuel passes at the earlier of: (i) the time the Aviation Fuel passes the inlet coupling of the receiving aircraft; or (ii) the time the Aviation Fuel passes the inlet coupling of Customer's or Customer's agent's receiving equipment; or (iii) in the case of self-service customers, as the Aviation Fuel passes from the nozzle of the dispensing apparatus.
<b>Delivery into bulk storage operated by Customer</b>	risk and title passes as the Aviation Fuel passes the inlet coupling or hose connection of the receiving fuel facility, isotainer/IBC, storage tank or fill line (as the case may be).
<b>Delivery by barrel/drum</b>	risk and title passes at the time of off-loading, i.e. when the container is removed from the delivery vehicle and, unless Viva Energy agrees otherwise in writing, where the container is supplied by Viva Energy ownership of the container remains with Viva Energy but the Customer is responsible for using and returning the containers in accordance with Viva Energy's instructions and for any damage, loss or theft of the containers while in the care and control of the Customer.
<b>Uplifted from a fuel facility</b>	as the Aviation Fuel passes the outlet coupling of the supplying fuel facility.
<b>Delivery to vessel or over water</b>	in accordance with Viva Energy specific marine terms and conditions as published at <a href="http://www.vivaenergy.com.au/quick-links/customer-terms-conditions">http://www.vivaenergy.com.au/quick-links/customer-terms-conditions</a> as updated and amended from time to time.
<b>Delivery of Equipment</b>	Where Viva Energy is supplying fuel storage tanks, equipment or other items related to Aviation Fuel to the Customer then Viva Energy's Standard Equipment Conditions published at <a href="http://www.vivaenergy.com.au/quick-links/customer-terms-conditions">http://www.vivaenergy.com.au/quick-links/customer-terms-conditions</a> apply to that supply and risk and title shall pass to the Customer in accordance with Viva Energy's Standard Equipment Conditions.

## Delivery documentation

4.12 Unless otherwise agreed, Viva Energy shall provide the Customer at the time of delivery with a copy of a delivery receipt specifying the grade and quantity of Aviation Fuel delivered. Except at unmanned sites, the delivery receipt shall be signed by the representatives of Viva Energy and the Customer. Customer will be deemed to have received and accepted the quantity of fuel stated in the delivery note pursuant to these terms and conditions irrespective of any failure by it or its representative to sign the delivery receipt.

## 5. Customer activities

# General Terms and Conditions (Aviation Fuel)

## Customer activities

- 5.1 The Customer confirms it is fully responsible for and assumes all risks associated with the performance of the following activities:
- (a) proper operation of all appropriate aircraft fuelling switches, valves, and fuel quantity indicators and gauges;
  - (b) supervision of the refuelling, and entry in the aircraft's refuelling record of the volume and distribution of fuel delivered into the aircraft;
  - (c) all use of Customer drums for refuelling;
  - (d) fuelling or defueling of Customer's Aircrafts (where local airport regulations permit) while passengers are on board;
  - (e) use of Viva Energy refuelling equipment for adding fuel additives provided by the Customer at the time of refuelling; and
  - (f) walking on wings for refuelling.
- 5.2 If Customer requests permission from Viva Energy to carry out any of the above activities or Viva Energy (or any of its Delegates) agrees to carry out any of the above functions for the Customer, the Customer (and its Delegates):
- (a) shall consult, coordinate and cooperate with Viva Energy to ensure that proper operational procedures are in place, adequately cover the activity and are followed;
  - (b) must comply with the provisions of all relevant regulations and applicable industry standards relating to the activity or function including obtaining permission for the activity from the local airport authority where required to do so and ensure appropriate safety instructions are issued to and strictly observed by Customer (and its Delegates);
  - (c) maintain adequate Aviation and General Third-Party Liability insurance in respect of the activity or function; and
  - (d) shall indemnify Viva Energy (and its Delegates) against all claims, demands, proceedings, damages and liabilities for loss of or damage to any property whatsoever or for injury, including fatal injury or disease to any person whatsoever, and against all associated costs (including legal costs) and expenses that arise out of or are connected with actions or omissions in the performance by or on behalf of Viva Energy or any of its Delegates of any or all of the activities or functions except that this indemnity shall be reduced to the extent such loss, damage, injury, disease or death are caused by the gross negligence or wilful misconduct of Viva Energy (or its Delegates).

## Health and safety

- 5.3 Viva Energy is committed to the promotion of health and safety and to proper regard for the environment in respect of all its activities. Viva Energy issues health and safety data sheets for the Aviation Fuel and the Customer shall be responsible for ensuring that its employees, contractors and buyers read and observe the instructions and recommendations in these.
- 5.4 The Customer shall ensure that all installations and equipment used with the Aviation Fuel are installed, maintained and operated in such manner to avoid accidents which could have been reasonably anticipated and shall take reasonable steps to prevent the Aviation Fuel, used or unused, to enter drainage, sewage systems, water courses or soil. The Customer shall cooperate, so far as it can reasonably, with Viva Energy in implementing measures designed to improve health, safety and environmental performance.

## 6. Prices, duties, taxes and charges

### Prices

- 6.1 In the absence of any price stated at the time of Order or in any Sale Confirmation, the price shall be set by Viva Energy and be payable by the Customer based on:
- (a) the Posted Airfield Price;
  - (b) the time and place of delivery; and/or
  - (c) as otherwise pre-agreed by Viva Energy and the Customer in writing.

### Price adjustments

- 6.2 If there is an increase in the costs incurred or to be incurred by Viva Energy in making the relevant supply due to circumstances beyond the control of Viva Energy, including:
- (a) Viva Energy being required to change the specification of any of Aviation Fuel as a result of any new or

varied laws, by-laws, rules, regulations, directions or orders applicable to the supply of Aviation Fuel including orders made by government bodies or authorities or a change in applicable industry standards;

- (b) as a result of:
- (i) a change in fuel arrangements between Viva Energy and a Deliverer at any Delivery Airfield which restricts Viva Energy's ability to supply Aviation Fuel to the Customer from that Delivery Airfield;
  - (ii) being required to comply with any law which has, as one of its objectives, the reduction, offset or management of greenhouse gases, carbon, emissions or pollution including associated legislation, policy and regulations, or any carbon pollution reduction scheme, emissions trading scheme or like scheme; or
  - (iii) being required to supply bio or other renewable fuels or pay a charge for not so doing; or
  - (iv) being directed to hold minimum stock of Products or as a result of implementing ongoing compliance measures for the purpose of the Fuel Security Act 2021 (Cth) and the Fuel Security (Minimum Stockholding Obligation) Rules 2022.
- (c) the occurrence of any other events which:
- (i) result in Viva Energy modifying the specifications for Aviation Fuel to be supplied under these Aviation GTCs;
  - (ii) prohibit Viva Energy from pricing in accordance with these Aviation GTCs; or
  - (iii) adversely impacts on the continued supply of Aviation Fuel under these GTCs Agreement,

then:

- (d) Viva Energy may give the Customer notice requiring a review of the prices payable by the Customer ('**Change Event Notice**'); and
- (e) Viva Energy and the Customer acting reasonably must attempt to agree:
- (i) alternative means of calculating the price for Aviation Fuel which is, insofar as practicable:
    - (A) comparable to the original pricing;
    - (B) reflective of Viva Energy's additional costs incurred in respect of compliance with the legislative change or overcoming the external event; and
  - (ii) if necessary changes to the contractual terms, which reasonably allow Viva Energy to recover or overcome the consequences of the events causing Viva Energy to incur additional costs,
- and:
- (iii) if the parties agree on a revised price (and revised contractual terms where applicable) then the parties will record their agreement in writing as an amendment to these Aviation GTCs; or
  - (iv) if the parties do not agree on a revised price (and revised contractual terms) within 15 days of the date of the Change Event Notice then clause 6.3 shall apply.

- 6.3 If after 15 days of the date of the Change Event Notice (or such other longer period the parties may agree) the parties, Viva Energy may either:
- (a) terminate supply of Aviation Fuel under these Aviation GTCs by not less than 30 days' written notice to the Customer (or such lesser notice as may be required to ensure that Viva Energy is not in breach of the relevant legislation); or
  - (b) elect that supply of Aviation Fuel pursuant to these Aviation GTCs continue at the original price payable for Aviation Fuel.

- 6.4 Where requested by the Customer, Viva Energy shall provide evidence to the Customer to substantiate the additional costs incurred by Viva Energy for the purposes of clause 6.2.

## *Duties and taxes*

- 6.5 The price is exclusive of any taxes, fees or other charges, imposed by any national, local or airport authority, which are shown as separate items on the invoice for the account of the Customer. To avoid doubt, prices quoted are exclusive of GST (see clauses 6.10 to 6.13).
- 6.6 In addition to the price for Aviation Fuel, Customer shall also pay to Viva Energy all duties, taxes, fees or other charges (by way of example and not an exhaustive list: governmental taxes, sales tax, use tax, VAT, GST, mineral oil tax, or any other tax, license fees, inspection fees, airport fees, or any other fees related to the



buying, selling, loading and unloading of aviation fuel) ("**Taxes**"), whether foreign or domestic, now or later assessed, imposed or levied relative to Customer's purchase of Aviation Fuel. Any estimate of Taxes contained in any proposal, purchase order, Sale Confirmation and/or invoice is for information purposes only, and its applicability may vary according to the laws of any particular state. Omission or failure to add such tax, governmental tax, duty, assessment, fee or other charge to any proposal, purchase order and/or invoice shall not relieve Customer from liability for payment. In the event any additional tax, governmental tax, duty, assessment, fee or other charge is assessed to Viva Energy, or deemed applicable by the local authority, Viva Energy may assess such additional taxes or fees to Customer through supplementary invoices which Customer agrees to pay.

6.7 For the correct application of taxes, fees or other charges, the Customer undertakes to and shall, according to applicable tax or other laws, provide the correct classification of the flight:

- (a) commercial or private;
- (b) international or domestic.

It is the Customer's responsibility to provide documentation to Viva Energy to support the correct classification of the flight for compliance with applicable tax and other laws.

6.8 Any taxes, penalties, costs, fines, losses and/or interest that Viva Energy suffers or incurs arising out of the buyer's (and/or its personnel/representatives') acts and/or omissions, shall be for the Customer's account pursuant to which Viva Energy shall invoice the Customer, and the Customer shall indemnify Viva Energy for all such taxes, penalties, costs, fines, losses and/or interest.

### *Third party charges*

6.9 Unless otherwise agreed in writing between the Customer and Viva Energy, the price is exclusive of third-party charges imposed by any national, local or airport authority or other applicable third parties, which shall be shown as separate items on the invoice for the account of the Customer.

### *GST*

6.10 If any party makes a taxable supply under or in connection with these Aviation GTCs, that party may in addition to the amount payable under or in connection with these Aviation GTCs, recover from the other party an additional amount on account of GST payable by the supplier in respect of the taxable supply unless the consideration provided for the taxable supply is expressly stated to be GST inclusive.

6.11 Where a taxable supply is made under or in connection with these Aviation GTCs, the supplier must issue to the other party a valid tax invoice or an adjustment note, as applicable, in accordance with GST law.

6.12 Any amount paid or payable by a party as reimbursement for, or calculated by reference to, any expenses or costs incurred by the other party to these Aviation GTCs will be calculated net of any input tax credits which the other party is entitled to in respect of the expenses or costs.

6.13 If there is a change in the GST rate, then any amount payable under or in connection with these Aviation GTCs which is stated to include an amount on account of GST will be increased or decreased by an appropriate amount so that the party which makes the supply receives the same amount (after remittance of GST) as it would have received at the GST rate prevailing before the change.

## **7. Payment**

### *Payment*

7.1 Unless otherwise agreed in writing between the Customer and Viva Energy, payment of the price and any taxes, fees or other charges payable under these Aviation GTCs shall be paid in Australian Dollars due from the Customer by direct debit, credit/debit card or bank transfer payment against an invoice upon ordering the Aviation Fuel from Viva Energy ("**Due Date**").

### *Payment default*

7.2 If any amounts are not paid by the Due Date, Viva Energy may do one or more of the following:

- (a) immediately withhold future deliveries until all sums due have been paid in full;
- (b) require the Customer to make cash payment at the Posted Airfield Price at the Delivery Airfield at the time of any future delivery;
- (c) receive from the Customer, upon demand, immediate payment, in advance of the due date or of delivery or collection, in respect of each or any invoice, delivery or collection or any proportion thereof;
- (d) require the Customer to provide any security satisfactory to Viva Energy;
- (e) charge the Customer simple interest on the overdue amount from the Due Date until payment, accruing

- daily and calculated at the rate for the time being fixed under Section 2 of the Penalty Interest Rates Act 1983 (Vic);
- (f) recover the reasonable cost of recovering the overdue amount, such as legal or debt collection costs; and/or
  - (g) review and adjust the Customer's credit limit and/or payment terms as Viva Energy considers appropriate.

## *Payment Dispute*

- 7.3 If the Customer disagrees in good faith with any amount shown in any invoice or statement received from Viva Energy as being payable by the Customer, then the Customer shall:
- (a) as soon as practicable and where possible at least 5 business days prior to the Due Date give written notice to Viva Energy specifying the amount or any portion of the amount shown in any invoice or statement as in dispute and the basis for the dispute ('Payment Dispute Notice'); and
  - (b) enter into discussions with Viva Energy as soon as possible to resolve the payment dispute, with a view, where possible to do so, of resolving the dispute prior to the Due Date.
- 7.4 If the payment dispute under clause 7.3 is:
- (a) resolved prior to the Due Date the Customer shall pay the resolved invoiced amount in full by the Due Date (and where the resolved invoiced amount is less than the original invoiced amount Viva Energy shall issue a corrected invoice or other adjustment for the resolved invoiced amount); or
  - (b) not resolved prior to the Due Date the Customer and Viva Energy shall continue to use good faith efforts to resolve the disputed amounts within 15 days following the original Due Date. Any amounts subsequently resolved shall be due and payable within 5 days of resolution together with interest at the rate accruing in accordance with clause 7.2(a) from day to day from the original Due Date up to the date of repayment of the underpaid amount.

## *Variation of payment terms (including Customer's credit limit)*

- 7.5 If Viva Energy reasonably determines that, there has been a material adverse change in the Customer's creditworthiness or ability to pay amounts due or which become due under these Aviation GTCs, Viva Energy reserves the right, acting reasonably and to the extent permitted to protect Viva Energy's legitimate business interests, to suspend, cancel or vary the Customer's credit account arrangements with Viva Energy:
- (a) by giving the Customer not less than 14 day's written notice; or
  - (b) by written notice to the Customer with immediate effect, where the Customer:
    - (i) fails to pay an amount by the Due Date on two or more occasions in the past six months;
    - (ii) is impacted by a financial, operational or legal factor that in the reasonable opinion of Viva Energy impairs or might impair the Customer's solvency or liquidity so as to create an unwarranted credit risk; or
    - (iii) exceeds the Customer's credit limit as specified by Viva Energy from time to time in accordance with the Application or these Aviation GTCs.
- 7.6 Viva Energy will notify the Customer in writing of the Customer's credit limit (inclusive of GST) following a request by the Customer or if Viva Energy deems it necessary. The Customer acknowledges that:
- (a) Viva Energy's withholding or termination of credit privileges in accordance with clause 7.5 does not constitute constructive termination of these GTCs, nor does it relieve either party of any obligations under these GTCs; and
  - (b) the Customer's credit limit does not in any way limit its liability under or in connection with these GTCs and (without limitation) the Customer is liable for all purchases of Product which may exceed its credit limit.

## *Creditworthiness*

- 7.7 In order to satisfy itself of the ability of the Customer to meet its obligations under these Aviation GTCs, Viva Energy may (acting reasonably):
- (a) conduct credit reviews in accordance with standard commercial practices. The Customer consents to and agrees to assist in these reviews by providing financial information; and/or
  - (b) require the Customer to provide and maintain such credit support / security for payment as Viva Energy may reasonably request for protection against the risk of non-payment (including provision of bank guarantee, parent company guarantee or similar on such reasonable terms and conditions as required by Viva Energy commensurate with the assessed credit risk).

## 8. Use of third party suppliers and changes to airfield arrangements

### *Third party suppliers*

- 8.1 The Customer acknowledges and agrees that Viva Energy may deliver Aviation Fuel pursuant to these Aviation GTCs by independent contractors, agents, third party vendors or service providers, including airfield transporters and into-plane agents (collectively "**Third Party Suppliers**"). Viva Energy shall coordinate and make any arrangements it considers appropriate for Aviation Fuel and related services with Third Party Suppliers.

### *Changes to Airfield arrangements*

- 8.2 The Customer acknowledges that Viva Energy may change its arrangements for supply of Aviation Fuel at any Delivery Airfield including by:

- (a) entering into new or varied commercial arrangements with Third Party Suppliers at any Delivery Airfield;
- (b) appointing Third Party Suppliers to perform Viva Energy's supply and delivery obligations under these Aviation GTCs on behalf of Viva Energy;
- (c) redeveloping or opening a new Delivery Airfield in addition to or in substitution of an existing Delivery Airfield,

when Viva Energy does so it will provide notice as soon as practicable to the Customer and the Customer shall, subject to clause 6.2 if it applies, accept Aviation Fuel supplied to the Customer via the changed arrangements.

- 8.3 In addition to clause 8.2, the Customer acknowledges that Viva Energy may cease operating at a Delivery Airfield, in which case these Aviation GTCs in respect of the affected Delivery Airfield will cease to apply. Viva Energy shall use best endeavours to give the Customer as much notice as practicable of Viva Energy ceasing operations at a Delivery Airfield to enable the Customer to transition to alternative Aviation Fuel supply arrangements at the affected Delivery Airfield.

## 9. Fuel cards

### *Terms of issue*

- 9.1 Viva Energy may issue fuel card(s) or charge cards to the Customer (including Viva Energy Fuel2Sky™ Card) ("**Fuel Card**") subject to Viva Energy Fuel Card Terms and Conditions as published <http://www.vivaenergy.com.au/quick-links/customer-terms-conditions> ("**Fuel Card Terms and Conditions**").

- 9.2 Without limiting the Fuel Card Terms and Conditions, the Customer acknowledges and agrees that:

- (a) the Fuel Card remains the property of Viva Energy at all times.
- (b) Viva Energy may, at any time, require the return of the Fuel Card and the Customer must return it to Viva Energy (or any relevant Deliverer) within twenty-four (24) hours of Viva Energy requesting its return.
- (c) Customer may cancel the Fuel Cards at any time by providing written notice to Viva Energy.
- (d) Unless expressly agreed otherwise by Viva Energy for every Fuel Card issued to the Customer:
  - (i) the Customer must specify a nominated Customer Aircraft and the Fuel Card will be embossed with the registration of the Customer's Aircraft;
  - (ii) the Fuel Card must only be used to purchase Aviation Fuel for the nominated Customer's Aircraft as identified on the Customer's air operator's certificate.
- (e) If any Fuel Card is lost, stolen or misused, the Customer must notify Viva Energy immediately if Customer believes a Fuel Card is lost, stolen or suspects such Fuel Card is being used without its permission and confirm the notification in writing within twenty-four (24) hours. Customer shall be responsible to pay for all charges incurred prior to such notification.
- (f) Unless expressly agreed otherwise by Viva Energy, the Customer will be charged the relevant Posted Airfield Price as set by the relevant Deliverer from time to time.
- (g) Fuel Cards shall be valid upon receipt and through the expiration date printed on their face. Customer acknowledges that the Fuel Cards are non-transferable and have been provided by Viva Energy for Customer's exclusive use.
- (h) No other person or entity is permitted to use the Cards for charges, identification, or for any other reason.

### *Fuel Card payments*

## General Terms and Conditions (Aviation Fuel)

- 9.3 By using the Fuel Cards, Customer agrees to pay for all fees, interest and penalties billed to Customer's account as a result of charges incurred by Customer. Payment for such fees and other charges will be made in accordance with these Aviation GTCs.
- 9.4 Customer shall be responsible for ensuring that the information printed on the Fuel Cards or relating to such Fuel Cards is and remains accurate. Customer's failure to provide accurate information may cause Fuel Cards to be suspended.

### 10. De-fuelling

- 10.1 Customer may request and Viva Energy may agree upon a de-fuelling of Customer's aircraft. The Aviation Fuel so removed from Customer's aircraft shall be disposed of or stored as agreed between the parties and at Customer sole cost and expense. Viva Energy may charge an extra fee for such services.
- 10.2 If Customer requests that Aviation Fuel is removed from Customer's aircraft when there are passengers or other persons on board Customer's aircraft or embarking or disembarking, Customer shall indemnify Viva Energy from and against all claims for loss of or damage to property or to the environment caused by or arising out of such defueling in accordance with clause 5.
- 10.3 If de-fuelling of Customer's aircraft is necessary solely due to Viva Energy's fault or negligence, Viva Energy shall defuel Customer's aircraft at Customer's request and at Viva Energy's sole cost and expense.

### 11. Warranties and limits on liability

#### *Customer's use of Aviation Fuel*

- 11.1 The Customer acknowledges that:
- (a) it will exercise due care and carry out due diligence to keep informed about and ensure the fitness of the Aviation Fuel for the purpose in which the Customer intends to use it; and
  - (b) except for the warranties expressly made in these Aviation GTCs in respect of the Aviation Fuel and subject to clause 11.4 (Australian Consumer Law guarantees), all conditions, warranties, undertakings and representations, express or implied arising by statute, general law or otherwise are expressly excluded by Viva Energy.
- 11.2 The Customer confirms that the Customer will use the Aviation Fuel for use in Aircraft and for no other purposes.
- 11.3 Except where the Customer is authorised by Viva Energy to resell or re-supply the Aviation Fuel, the Customer must not place any Order where the Customer proposes to re-sell or re-supply the Aviation Fuel.

#### *Australian Consumer Law guarantees*

- 11.4 Nothing in these Aviation GTCs is intended to have the effect of excluding any applicable law that cannot be restricted or modified by agreement of the parties or any consumer guarantees, conferred on the Customer by Schedule 2 of the *Competition and Consumer Act 2010* (Cth) ('**Australian Consumer Law**') any other applicable, equivalent legislation or rules of any State, Territory or jurisdiction (collectively '**Non Excludable Conditions**').
- 11.5 Subject to clause 11.4 and clause 11.6, and to the extent permitted by law Viva Energy's liability for breach of the Non-Excludable Conditions is limited to:
- (a) in the case of goods:
    - (i) replacing the goods or supplying equivalent goods;
    - (ii) repairing the goods or the payment of the cost of having the goods repaired; or
    - (iii) the payment of the cost of replacing the goods or of acquiring equivalent goods; and
  - (b) in the case of services:
    - (i) supplying the services again; or
    - (ii) payment of the cost of having the services supplied again.

#### *Limitation of liability*

- 11.6 Subject to Viva Energy's obligations in respect of the Non Excludable Conditions and clause 11.7, and to the extent permitted by law, except for liability for personal injury and death, Viva Energy's (and its Delegates') maximum aggregate liability to the Customer for all claims under or relating to these Aviation GTCs or its subject matter, whether for breach of contract, tort (including negligence), under statute, under an indemnity or

on any other basis shall not exceed two million Australian dollars (\$2,000,000).

- 11.7 Despite anything to the contrary in these GTCs or any other document, to the extent permitted by law neither party shall have any liability to the other party under or in connection with these Aviation GTCs or the subject matter of these Aviation GTCs, whether for breach, pursuant to any indemnity, negligence or any other tort, breach of statutory duty or otherwise, for any Consequential Losses whether suffered by the Customer or any third party.

## 12. Force majeure

### *Non-liability for breach*

- 12.1 Despite anything else, neither party shall be considered in breach of contract nor liable in damages for delay in or for non-performance of one or more of its contractual obligations to the extent caused by a Force Majeure Event. The Customer acknowledges and agrees that in the event of a shortage of Aviation Fuel as a result of a Force Majeure Event, Viva Energy may, without being deemed to be in breach of its obligations under these Aviation GTCs, withhold, suspend, reduce, ration or apportion supply to the Customer as it may, in its absolute discretion, deem desirable during the period or periods of shortage and Viva Energy is not required to make good such shortages.

### *Cooperation*

- 12.2 The parties shall cooperate to minimise the effects of the Force Majeure Event on the performance of these Aviation GTCs and shall discuss in good faith alternative ways in which these Aviation GTCs can be performed and/or the effect of the Force Majeure Event can be minimised.
- 12.3 Each party must resume compliance with its obligations as soon as a Force Majeure Event ceases to affect its performance of its obligations.

### *Continuing payment obligations*

- 12.4 The Customer's inability to make payment under these Aviation GTCs by the Due Date for payment shall not of itself be considered a Force Majeure Event. Nothing in this clause shall impact on either party's payment obligations under these Aviation GTCs unless those payment obligations are directly affected by the Force Majeure Event.

### *Termination*

- 12.5 Where a Force Majeure Event has the effect of:
- (a) rendering the performance of these Aviation GTCs impossible, illegal or radically different from what was intended at the time of signing these Aviation GTCs; or
  - (b) substantially affecting the performance of these Aviation GTCs as a whole and the duration of the Force Majeure Event exceeds 180 days,
- either party has the right to terminate these Aviation GTCs by written notification within a reasonable period to the other party.
- 12.6 Where a party terminates under clause 12.5 both parties shall be discharged from future obligations only and neither may claim damages for the other's future non-performance. The parties must perform all obligations not affected by Force Majeure Event up to the date of the termination with any sums paid in advance and not earned or due being refunded, save where these Aviation GTCs or applicable law provides otherwise. Nothing in this clause shall impact on any separate rights of termination under this contract or at law.

## 13. Termination

### *Termination by either party for default*

- 13.1 These Aviation GTCs may at any time be terminated immediately by either party by written notice to the other party if:
- (a) that other party breaches a material term of these Aviation GTCs (not including a warranty) and if the breach is capable of being remedied, that other party fails to remedy the breach within 14 days of a written notice requiring the breach to be remedied; or
  - (b) the other party becomes insolvent, or enters into any composition or arrangement with creditors, or a petition is presented or a meeting is called for the purpose of winding up the other party for whatever reason, or the other party has a manager or receiver or administrator appointed in respect of the whole or any part of its undertaking or assets, or the other party is declared or becomes bankrupt.
- 13.2 For the purposes of clause 13.1(a) the Customer acknowledges that any failure by the Customer to pay any



amount due by the Due Date is deemed to be a breach of a material term and if the Customer fails to make payment of an overdue amount within 14 days of a written notice by Viva Energy to do so then Viva Energy may terminate these Aviation GTCs under this clause (in addition to its other rights elsewhere under these Aviation GTCs).

## *Termination by Viva Energy*

- 13.3 Viva Energy may, at any time by giving notice to the Customer, immediately terminate these Aviation GTCs if:
- (a) there is a change in control of the Customer which has not first been approved in writing by Viva Energy, which approval must not be unreasonably withheld or delayed; or
  - (b) the Customer has failed to pay an amount by the Due Date on 3 occasions or more in any 6-month period.

## *Consequences of termination*

- 13.4 Termination under this clause 13 or otherwise is without prejudice to the rights and obligation of either party which have accrued prior to or on such termination or which are expressed or implied (by their nature) to continue after the termination of these Aviation GTCs will do so.
- 13.5 For clarity, if at any time:
- (a) these Aviation GTCs are terminated otherwise than by reason of a breach by Viva Energy; or
  - (b) any of the events described in clause 13.3 occur,
- every amount then owing by the Customer to Viva Energy and any amount that has not yet become due in respect of deliveries made before that time, shall become immediately payable by the Customer to Viva Energy.

## 14. Confidentiality

- 14.1 Each party agrees to keep, and procure its employees, agents, auditors and advisers keep, the terms of these Aviation GTCs and any information supplied by the other party confidential, except where:
- (a) disclosure is required by law;
  - (b) the information was in the first mentioned party's control before receiving it from the other party;
  - (c) the information becomes generally known to the public otherwise than by the first mentioned party's disclosure of it in breach of these Aviation GTCs; or
  - (d) a party discloses information to an Affiliate of that party (provided that the Affiliate keeps the information confidential).
- 14.2 The obligations of the parties under this clause 14 survive the expiry or termination of these Aviation GTCs.

## 15. Assignment and subcontracting

- 15.1 Viva Energy may at any time assign any of its rights or transfer by novation any of its rights and obligations under these Aviation GTCs to any person but shall give notice of any such assignment as soon as reasonably possible to the Customer. At the request of Viva Energy, the Customer must do anything reasonably necessary, including the execution of documents or the amending of these Aviation GTCs, to affect any assignment or novation by Viva Energy.
- 15.2 The Customer may assign its rights under these Aviation GTCs with the prior written consent of Viva Energy, which consent must not be unreasonably withheld. The Customer acknowledges that Viva Energy may use subcontractors in the performance of its obligations under these Aviation GTCs, but Viva Energy will remain liable to the Customer to comply with these Aviation GTCs in all respects.

## 16. Dispute resolution

### *Notice of dispute*

- 16.1 If a dispute arises between the parties to these Aviation GTCs, a party may give the other party a written notice of dispute adequately identifying and providing details of the dispute ("**Dispute Notice**").
- 16.2 A party receiving a Dispute Notice must respond in writing within 14 days of receipt indicating its views on the dispute and whether it accepts or rejects part or all of the claims or matters contained in the Dispute Notice and its reasons for doing so ("**Response**").

### *Resolution by senior management*

- 16.3 If the dispute cannot be resolved within 14 days of receiving the Response, representatives of each party must

within 7 days meet and discuss, in a bona fide manner, the issues raised by the Dispute Notice and the Response.

- 16.4 If the dispute is not resolved within 14 days after the referral to the representatives of each party, the dispute shall be referred to the senior management of each party for resolution.

*Legal proceedings or alternative dispute resolution*

- 16.5 Subject to clause 16.6 unless the dispute resolution procedure set out in this clause 16 has been followed and the matter remains unresolved for a period of 28 days from the date on which it is referred to the senior management of each party, no party may commence legal proceeding in relation to any dispute arising in connection with these Aviation GTCs (except in the case of an application for urgent interlocutory relief or to enforce this clause).

- 16.6 Nothing in this clause 16 prevents a Party from:

- (a) seeking any urgent interlocutory relief which may be required in relation to the Contract; or
- (b) with written agreement from the other party (including in respect of the processes to be following) engaging in alternative dispute resolution such as mediation, expert determination or arbitration.




## 17. Notices

- 17.1 A notice or other communication to a party under these Aviation GTCs (**Notice**) must be:

- (a) in writing and in English;
- (b) signed by the sender or a person authorised to sign on behalf of the sender;
- (c) addressed to that party in accordance with the details shown in the Application or Term Supply Contract (as applicable) (or any alternative details given in writing to the sending party):

- 17.2 How notice given and received

- (a) A Notice must be given by one of the methods set out in the table below.
- (b) A Notice is regarded as given and received at the time set out in the table below. However, if this means the Notice would be regarded as given and received outside the period between 9.00 am and 5.00 pm (addressee's time) on a Business Day (**Business Hours Period**), then the Notice will instead be regarded as given and received at the start of the following Business Hours Period.

Notice delivery method		When Notice is regarded as given and received
	By hand to the nominated address	When delivered to the nominated address.
	By pre-paid post to the nominated address	At 9.00 am (addressee's time) on the second Business Day after the date of posting.
	By email to the nominated email address	5 hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered.

## 18. International trade regulations

- 18.1 The parties agree that they, as parties to these Aviation GTCs, and all matters arising under it are subject to economic sanctions and export control laws of the states and jurisdictions where they operate or conduct business, including without limitation, where the Agreement will be performed ("**Trade Regulations**"); and affirm that they will comply with applicable Trade Regulations.

- 18.2 A party's failure to comply with the Trade Regulations constitutes a material breach of these Aviation GTCs by that party.

- 18.3 Neither Party shall be obliged to perform any obligation otherwise required by these Aviation GTCs including without limitation an obligation to:

- (a) perform, deliver, accept, sell, purchase, pay or receive monies to, from, or through a person or entity; or
- (b) engage in any other acts,

if to do so would be in violation of, inconsistent with, or expose such party to punitive measures under any applicable Trade Regulations.

- 18.4 Where any performance by a party would be in violation of, inconsistent with, or expose such party to punitive measures under applicable Trade Regulations, such party (the “**Affected Party**”) shall, as soon as reasonably practicable, give written notice to the other party of its inability to perform and the nature of the possible or actual violation. Once such notice has been given, the Affected Party shall be entitled:
- (a) to immediately suspend the affected obligation (whether payment or performance) until such time as the Affected Party may lawfully discharge such obligation; and/or
  - (b) where the inability to discharge the obligation continues (or is reasonably expected to continue) until the end of the contractual time for discharge thereof, to a full release from the affected obligation; provided that where the relevant obligation relates to payment for Products which have already been delivered, the affected payment obligation shall remain suspended (without prejudice to the accrual of any interest on an outstanding payment amount) until such time as the Affected Party may lawfully resume payment,

in each case without any liability for damages for breach of contract, penalties, costs, fees and expenses.

## 19. General

- 19.1 The Customer acknowledges that Viva Energy may give or receive commissions, volume discounts, fees and other benefits in connection with the supply of products or services to the Customer.
- 19.2 Viva Energy reserves the right (acting reasonably) to vary these Aviation GTCs at any time, by giving the Customer not less than 14 days' notice in writing and/or by publishing updates of these Aviation GTCs at <http://www.vivaenergy.com.au/quick-links/customer-terms-conditions>. The Customer confirms that it has the ability to access, has accessed and has read, the information made available by Viva Energy at all of the world wide web site/URLs/addresses pages referred to anywhere throughout these Aviation GTCs and URLs are understood to also refer to successor URLs and information or resources linked from within the websites at such URLs.
- 19.3 Except where varied by Viva Energy under clause 19.2, no amendment or variation to these Aviation GTCs is valid or binding on a party unless made in writing executed by both parties.
- 19.4 No failure to exercise or delay in exercising any right, power or remedy by a party operates as a waiver. Single or partial exercise or any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the party granting that waiver unless made in writing.
- 19.5 These Aviation GTCs (together with any guarantees, warranties or conditions applied by law) contains the entire agreement between the parties with respect to its subject matter and supersedes all prior agreements, representations and understandings between or by the parties in connection with it.
- 19.6 Any terms and conditions incorporated in the Customer's purchase order, or Viva Energy's invoice or delivery documentation in relation to Products delivered to the Customer, deviating from or inconsistent with the provisions of these Aviation GTCs (including any statement that such terms and conditions shall prevail) are hereby expressly excluded.
- 19.7 If any provision of these Aviation GTCs is or becomes illegal or unenforceable, it shall be considered separate and severed from these Aviation GTCs and the remaining provisions will remain in force and be binding on the parties.
- 19.8 Each party agrees to do all such things and execute all such deeds, instruments, transfers or other documents as may be necessary or desirable to give full effect to the provisions of these Aviation GTCs and the transactions contemplated by it.
- 19.9 These Aviation GTCs may be executed in any number of counterparts which, when taken together, shall constitute one instrument.
- 19.10 If these Aviation GTCs is 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.
- 19.11 If the Customer carries on business as a trustee, the Customer is bound by the terms and conditions of these Aviation GTCs both as trustee and in its own capacity.
- 19.12 These Aviation GTCs are governed by the law in force in the State of Victoria and any proceedings arising out of these Aviation GTCs shall be determined by a court of competent jurisdiction in that State.