

About this Document

This document (“**Aviation Fuel Card Terms and Conditions or these Terms and Conditions**”) sets out the terms and conditions upon which Viva Energy agrees to issue Aviation Fuel Cards (including Fuel2Sky™) to the Customer and the Customer agrees to use Aviation Fuel Cards.

These Aviation Fuel Card Terms and Conditions are intended to operate in addition to:

- The Commercial Account Opening Form and documents referenced in the form which has been signed by the Customer;
- where the Customer and Viva Energy have signed a separate agreement for fuel and other product supply, the terms and conditions of that fuel supply agreement (“**Fuel Supply Contract**”) or if no separate Fuel Supply Contract has been signed, then Viva Energy’s General Terms and Conditions for Fuel Supply (“**GTCs**”) as published on Viva Energy’s website,

all documents referenced in the Commercial Account Opening Form, the Fuel Supply Contract or GTCs as applicable

1. Scope

1.1 Unless otherwise agreed upon in a written agreement, these Terms and Conditions apply to:

- (a) all transactions between the Customer and Viva Energy in respect of the Customer’s use of Aviation Fuel Cards; and
- (b) also apply to all approved Affiliates, subsidiaries, authorised officers, directors, employees and agents that use an Aviation Fuel Card; and
- (c) all Aviation Fuel Cards issued to or for the account of the account holder.

2. Definitions

2.1 In these Terms and Conditions, the following applies:

| Word(s) | Meaning |
|--|--|
| Aviation Fuel Card or Card | means the aviation fuel card issued by Viva Energy to the Customer including Fuel2Sky™ card. |
| Commercial Account Opening Form | means the application form and any related documentation signed by or on behalf of the Customer applying for a commercial account with Viva Energy and/or an Aviation Fuel Card account. |
| Customer | means the person or entity nominated as “the Customer” in the signed Commercial Account Opening Form. |
| Nominated Premises | airfield locations and premises nominated by Viva Energy as Aviation Fuel Card refuelling locations (including self-service dispensers). |

3. Agreement to be bound by these Terms and Conditions

3.1 If Viva Energy accepts the Customer’s application pursuant to the Commercial Account Opening Form, Viva Energy may issue an Aviation Fuel Card to the Customer for each:

- (a) identified Customer’s Aircraft; or
- (b) Authorised User,

to obtain Aviation Fuel for use in Customer’s Aircraft at Nominated Premises across Viva Energy’s aviation network.



3.2 The Customer’s and each Authorised User’s acceptance of a Card or use of a Card constitutes Customer’s and each Authorised User’s agreement to be bound by these Terms and Conditions.

3.3 The Customer shall ensure that all users of the Card are aware of these Terms and Conditions which govern their use of the Card.

3.4 Cards shall be valid upon receipt and through the expiration dates printed on their face, unless sooner terminated in accordance with these Terms and Conditions.

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3.5 The Customer may terminate its or any Authorised User's use of Cards by notifying Viva Energy, as follows:

| | | |
|--|--------------|--|
|  By telephone: | 1300 735 793 | |
|  In writing: | By email to: | aviation-enquiries@vivaenergy.com.au |
| | By mail to: | Aviation Customer Solutions, PO Box 872 Melbourne, VIC 3001 |

3.6 The Customer shall be liable for any purchases made with any Card prior to Viva Energy's receipt of any such notice. Following notification, the Customer is responsible for either destroying or returning the Card in accordance with Viva Energy's instructions.

4. Supply of Aviation fuel

4.1 If a valid Card is presented, supplies of Aviation Fuel will be made to the Customer at the relevant Nominated Premises, subject to:

- (a) any transaction limits set by Viva Energy from time to time; and
- (b) the terms and conditions set out in the Fuel Supply Contract or GTCs (as applicable).

4.2 The Customer acknowledges and agrees that the supply of Aviation Fuel, must be into the tank of the Customer's Aircraft for use in the Customer's Aircraft.

5. Purchases and card use

Purchases

5.1 When using a Card the Customer is deemed to purchase the Aviation Fuel from Viva Energy, subject to the terms and conditions set out in the Fuel Supply Contract or GTCs (as applicable).

5.2 Property in Aviation Fuel purchased on Card will pass to the Customer immediately prior to the product passing into the tank of the relevant Aircraft.

5.3 Unless Viva Energy has received the Customer's notification in writing of loss, theft or possible unauthorised use of a Card, the Customer authorises Viva Energy to debit the Customer's Card account with every purchase of Aviation Fuel made by a person presenting a Card at the Nominated Premises to whom the fuel was supplied.

Use of the Card and the account

5.4 A Card is valid only for the purchase of Aviation Fuel (or any other goods and services) which Viva Energy from time to time advises Customer may be obtained with the Card.

5.5 Acting reasonably, Viva Energy has the right to refuse authorisation for any Card transaction and/or suspend or cancel any or all the Customer's Cards at any time and will promptly notify the Customer if it does so. For example, if a transaction results in the Customer's credit limit being exceeded, Customer is in breach of these Terms and Conditions or the Fuel Supply Contract or GTCs (as relevant), or Viva Energy (or the systems we use) reasonably suspect a transaction is fraudulent then Viva Energy reserves the right to cancel or suspend any or all the Customer's Cards, in which case, in addition to all other rights and remedies available to Viva Energy, the whole of the outstanding balance, both billed and pending charges, shall be due and payable to Viva Energy upon demand.

5.6 Customer shall also be liable for all fees and costs, incurred by Viva Energy in connection with any collection activities undertaken by Viva Energy for the non-payment of any amounts due by Customer.

Card use

5.7 Unless otherwise expressly stated in these Terms and Conditions, the Customer will be liable to Viva Energy for all Card transactions processed on the Customer's Card(s), including, without limitation, where, in respect of a Card, a transaction is processed in circumstances where the Authorised User is not the person presenting the Card.

Pin

5.8 If a PIN is issued with a Card, the Authorised User must use the PIN when using the Card at Nominated Premises. The Customer must ensure that the PIN is only used by Authorised Users and not disclosed directly or indirectly to any person not authorised to use the Card.

6. Ownership of cards and lost or stolen cards

Property

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- 6.1 All Cards remain the property of Viva Energy.
- 6.2 The Customer must immediately return all Cards that are no longer used, or are expired, cancelled or otherwise invalid, to Viva Energy cut in half, unless otherwise agreed by the parties.

Lost or stolen cards

- 6.3 If a Card is lost, stolen or subject to unauthorised use, the Customer must immediately notify Viva Energy via the contact details set out in clause 3.5. If notification of an unauthorised use, loss or theft of a Card is given verbally it must be confirmed in writing within 3 days. The Customer will be liable for any use of a Card by any person before notification in accordance with these Terms and Conditions. After Viva Energy has been notified and provided that this clause has been fully complied with, the Customer shall have no further liability for Card transactions other than transactions made by a person who has ceased to be an Authorised User where the Customer has allowed the Card to remain in the possession of that person.
- 6.4 The Customer must provide Viva Energy with all the information that the Customer has in its possession or that it can reasonably obtain, regarding the unauthorised use, loss or theft of a Card.

7. Authorised users

- 7.1 The Authorised User of an Aviation Fuel Card whose name appears on the Card is the only person permitted to use that Card in respect of the nominated Aircraft. Authorised Users must be authorised by the registered operator of the Aircraft in accordance with CASA requirements. Each identified Aircraft must be registered in the Australian Civil Aircraft Register. Each Authorised User must hold a current and valid pilot licence in accordance with CASA requirements.
- 7.2 Except as otherwise expressly stated in these Terms and Conditions, the Customer will be liable to Viva Energy for all Card transactions processed on the Customer's Card(s), including, without limitation, where, in respect of a transaction is processed in circumstances where the Authorised User is not the person presenting the Card. The Customer shall ensure that Authorised User(s) complies with these Terms and Conditions.

8. Billing and payment

Billing

- 8.1 Viva Energy shall issue invoices (the "Invoices") itemising all charges (including interest charges), taxes and fees payable for the applicable billing period in accordance with the Fuel Supply Contract or GTCs (as applicable).
- 8.2 Purchases made on a Card may be subject handling and administration fees to be mutually agreed upon in writing between Viva Energy and Customer for any extended payment terms and/or a merchant acceptance fee which shall be imposed by Viva Energy upon providing written notice to Customer.

Payment and liability of the Customer

- 8.3 Customer shall be liable for all amounts charged to Cards including without limitation all purchases, fees, taxes, late charges, and other charges or amounts due and owing to Viva Energy by Customer. If there is more than one Customer, each Customer shall be jointly and severally liable.
- 8.4 Viva Energy will advise you of the credit limit that applies to your account and, if applicable and to the extent reasonably practicable, Card(s). To the extent that Viva Energy extends credit terms to Customer, and despite any terms to the contrary in any written agreement, Customer's outstanding balance shall never exceed the credit limit specified by Viva Energy. Availability under the credit limit shall be calculated by adding the total amount specified in all unpaid invoices, plus Viva Energy's good faith estimate of the dollar amount of pending charges that are not yet billed (including charges authorized at the point of sale) and subtracting the same from Customer's total credit limit.
- 8.5 In each case, Customer agrees to pay Viva Energy the total amount specified on the invoice in accordance with the terms agreed between Viva Energy and the Customer and waives any right of set-off or adjustment against payments due to Viva Energy. Unless agreed otherwise between Viva Energy and the Customer, all payments are due within fourteen (14) days from the date of the invoice. All payments shall be made to the account details indicated on the front of any applicable invoice by electronic funds transfer or wire transfer of immediately available funds.

Disputed items

- 8.6 In the event a disputed item appears on an invoice:
 - (a) Customer shall, as soon as possible and before the due date for payment, give written notice to Viva Energy of the disputed item together with supporting evidence if any; and
 - (b) the parties shall try to resolve the disputed item as soon as possible.

pending resolution of the dispute, the Customer shall pay the undisputed amount due under the invoice by the due date. To the extent the dispute is resolved, and it is determined that the Customer is responsible for the disputed item then the Customer shall pay the resolved disputed item amount within 5 Business Days of the resolution of the dispute or such other period as may be agreed by the parties.

9. Warranties and limits on liability

Warranties

- 9.1 Customer warrants the truth, completeness and accuracy of the following in connection with these Terms and Conditions:
- (a) the financial information and all other information provided to Viva Energy; and
 - (b) Customer has and continues to comply with all applicable legislation, ordinances, rules, regulations and requirements of governmental authorities as they relate to the use of Aviation Fuel or the Card.

Limitations on liability

- 9.2 Viva Energy will not be liable for a failure or delay in delivering goods and/or services or in complying with these Terms and Conditions, if that failure or delay is due to:
- (a) a strike or other industrial action, compliance with a government request, a shortage of supply, or any event beyond its reasonable control; or
 - (b) the inability or refusal of the operator of the Nominated Premises to supply the product requirements of the Customer for any reason.

10. Changes in customer information and data protection

Changes in Customer's details

- 10.1 The Customer shall notify Viva Energy immediately of any change in the Customer's registered name, trading name, ownership, business entity, registered office or principal place of business and directorship. Any address nominated by the Customer or an Authorised User for delivery of a Card or other communication which differs from the address stated on the Commercial Account Opening Form must be confirmed by the Customer via the contact details set out in clause 3.5. Viva Energy may require proof of trading from such alternative address.

Data protection

- 10.2 Where Viva Energy receives, collects or handles Personal Information while processing and administering the Customer's Card, Viva Energy shall ensure that it has taken and continues to take all reasonable technical and organisational measures against unauthorised or unlawful processing or disclosure of the Personal Information.
- 10.3 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 <https://www.vivaenergy.com.au/contact/privacy-policy>), as amended from time to time.
- 10.4 The Customer acknowledges that it consented to this use by Viva Energy of its Personal Information in accordance with the Privacy Act Declaration in the Commercial Account Opening Form.

11. Changes to these terms and conditions

- 11.1 Viva Energy reserves the right to vary these Terms and Conditions at any time, in its discretion, by giving the Customer not less than 14 days' notice in writing and/or by publishing updates of these Aviation GTCs at 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. Any change takes effect from the first use of a Customer's Card after giving notice or publishing of the updated terms on the website (whichever occurs earlier).

12. Notices

- 12.1 Viva Energy may give a notice by:
- (a) delivering it personally to the Customer; or
 - (b) leaving it at, or sending it by post, facsimile or email to the Customer's address last advised to Viva Energy in writing. Except in the case of notice by post, the notice shall be deemed given on the date it is sent by Viva Energy. Notices sent by post shall be deemed to have been received on the 3rd day after posting.

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12.2 In addition to giving notice to Viva Energy in any other way permitted by law, the Customer must provide notice in writing and notice will not be effective until receipt by Viva Energy by email or post at the addresses shown in clause 3.5.

13. Taxes

Government Charges

13.1 Viva Energy has the right to charge the Customer's Card account with Government rates, taxes or charges which now are or which in the future may be imposed or charged upon the Customer's Card transactions, whether or not the Customer is primarily liable for the impost or charge.

GST

13.2 In these Terms and Conditions, "GST", "GST Law", "GST Rate", "Taxable Supply", "Tax Invoice" and "Adjustment Note" have the meanings given in section 195-1 of *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

13.3 Except where a Taxable Supply is expressly stated to be inclusive of GST, if a Taxable Supply is made under these Terms and Conditions by either the Customer or Viva Energy, the party which made the supply (the "**Supplying Party**") may in addition to the amount payable under these Terms and Conditions recover from the other party (the "**Receiving Party**") an additional amount on account of GST, calculated by multiplying the amount payable by the GST Rate (within the meaning of the GST Law, being 10% currently).

13.4 Where a Taxable Supply is made under these Terms and Conditions the Supplying Party shall issue to the Receiving Party a Tax Invoice or an Adjustment Note, as applicable, in accordance with the GST Law.

13.5 If there is a change in the GST Rate, then any amount payable which is stated to be inclusive of GST shall be increased or decreased by an appropriate amount so that the Supplying Party receives the same amount (after remittance of GST) as it would have received at the GST Rate prevailing before the change.

14. General

Waiver

14.1 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. No waiver is effective unless it is in writing

Assignment

14.2 These Terms and Conditions are personal to the Customer and the Customer shall not be entitled to assign, transfer, mortgage or charge any of its rights or obligations under these Terms and Conditions. Viva Energy, without the Customer's consent, may assign or transfer by novation any of its rights or obligations under these Terms and Conditions.

Severability

14.3 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.

Commissions

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

Joint and several liability

14.5 Where the Customer consists of two or more persons, the obligations of these persons shall be joint and several.

Trustee

14.6 If the Customer carries on business as a trustee, the Customer is bound by these Terms and Conditions both as trustee and in its own capacity.

Governing law

14.7 These Terms and Conditions shall be governed by and interpreted in accordance with the laws 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.