

About this document

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

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

- The Customer Application Form and documents referenced in the form which has been signed by the Customer;
- where the Customer has signed a separate agreement for fuel and other product supply with Viva Energy and/or its Affiliates, the terms and conditions of that product supply agreement (“**Product Term Supply Agreement**”) or if no separate Product Term Supply Agreement has been signed, then Viva Energy’s General Terms and Conditions of Product Supply (“**GTCs**”) as published on Viva Energy’s website,
- all documents referenced in the Customer Application Form, the Product Term Supply Agreement or GTCs as applicable.

1. SCOPE

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

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

2. DEFINITIONS




In these Terms and Conditions, the following applies:

Word(s)	Meaning
Affiliate	means a related body corporate as that term is defined in the <i>Corporations Act 2001</i> (Cth).
Customer Account Application	means the application form and any related documentation entered into by or on behalf of the Customer applying for a commercial account with Viva Energy and/or a Fuel Card account.
Customer	means the person or entity nominated as “the Customer” in the signed Customer Account Application.
Fuel Card	means a fuel card issued by Viva Energy to the Customer, for purchasing Products from Nominated Sites and branded with a trade mark that is owned or licensed by Viva Energy.
Motor Fuels	means unleaded, unleaded E10, Unleaded 95, premium unleaded, V-Power, liquefied natural gas (LNG) and diesel fuel (on-road use only), together with other motor fuels nominated by Viva Energy from time to time as available on the Customer’s Fuel Card at Nominated Premises.
Nominated Premises	means premises nominated by Viva Energy from time to time as Fuel Card Merchants.
Nominated Vehicle	means a vehicle nominated by the Customer for a Fuel Card in the Customer Account Application or by the Customer in writing.

Non-Shell LPG	means automotive LPG, other than Shell LPG.
Other Products and Services	means products and services other than Motor Fuels, Shell LPG and Non-Shell LPG, nominated by Viva Energy from time to time as available on the Customer's Fuel Card at Nominated Premises.
Product	means Motor Fuels, Shell LPG, Non-Shell LPG and Other Goods and Services, as applicable.
Shell LPG	means automotive LPG sold at the Nominated Premises under the Shell "AutoGas" brand
Viva Energy	means Viva Energy Australia Pty Ltd (ABN 46 004 610 459) or any of its Affiliates, as the case may be.

3. AGREEMENT TO BE BOUND BY THESE FUEL CARD TERMS AND CONDITIONS

- 3.1 If Viva Energy accepts the Customer's application pursuant to the Customer Account Application, Viva Energy may issue a Fuel Card to the Customer for each:
- (a) Nominated Vehicle; or
 - (b) Authorised User,
- to obtain Products at Nominated Premises.
- 3.2 The Customer's and each Authorised User's acceptance of a Fuel Card or use of a Fuel 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 Fuel Card are aware of these Terms and Conditions which govern their use of the Fuel Card.
- 3.4 Fuel 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.
- 3.5 The Customer may terminate its or any Authorised User's use of Fuel Cards by notifying Viva Energy, as follows:

 By telephone:	13 16 18	
	 Online: https://www.shell.com.au/business-customers/shell-fuel-card/shell-card-portal.html	
 In writing:	By email to:	shellcard-au@vivaenergy.com.au
	By mail to:	Fuel Card Customer Service Centre, PO Box 872 Melbourne, VIC 3001

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

4. SUPPLY OF PRODUCTS

Supply of Products

- 4.1 If a valid Fuel Card is presented, supplies of Products 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).

Title and risk in Products

- 4.2 Title and risk in Motor Fuels, Shell LPG and Non-Shell LPG purchased on Fuel Card will pass to the Customer immediately prior to the product passing into the storage tank of the relevant vehicle.
- 4.3 Title and risk in Other Products and Services purchased on Fuel Card will pass to the Customer upon the completion of the transaction processing the Fuel Card at the Nominated Premises.

5. PURCHASES AND FUEL CARD USE

Purchases

- 5.1 When using a Fuel Card to purchase Motor Fuel, Shell LPG and Non-Shell LPG the Customer is deemed to purchase them from Viva Energy, subject to the terms and conditions set out in the Fuel Supply Contract or GTCs (as applicable).
- 5.2 Unless Viva Energy has received the Customer's notification in writing of loss, theft or possible unauthorised use of a Fuel Card, the Customer authorises Viva Energy to debit the Customer's Fuel Card account with every purchase of Products made by a person presenting a Fuel Card at the Nominated Premises to whom the Products were supplied.

Use of the Fuel Card and the account

- 5.3 A Fuel Card is valid only for the purchase of Products which Viva Energy from time to time advises the Customer may be obtained with the Fuel Card.
- 5.4 Acting reasonably:
 - (a) where Viva Energy reasonably believes that the Customer is in breach of these Fuel Card Terms and Conditions, the Fuel Supply Contract or GTCs (as relevant); and/or
 - (b) where Viva Energy has a legitimate business interest to do so (including without limitation where a transaction results in the Customer's credit limit being exceeded, for non-use of a Fuel Card, where Viva Energy or the systems we use reasonably suspect a transaction is fraudulent),

Viva Energy may refuse authorisation for any Fuel Card transaction and/or suspend or cancel any or all the Customer's Fuel Cards at any time and will promptly notify the Customer if it does so, 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.

Fuel Card use

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

Pin

- 5.6 If a PIN is issued with a Fuel Card, the Authorised User must use the PIN when using the Fuel 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 Fuel Card.

6. OWNERSHIP OF FUEL CARDS AND LOST OR STOLEN FUEL CARDS

Property

- 6.1 All Fuel Cards remain the property of Viva Energy.
- 6.2 The Customer must immediately return all Fuel 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 Fuel Cards

- 6.3 If a Fuel 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 Fuel Card is given verbally it must be confirmed in writing within 3 days. The Customer will be liable for any use of a Fuel 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 Fuel Card transactions other than transactions

made by a person who has ceased to be an Authorised User where the Customer has allowed the Fuel 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 Fuel Card.

7. AUTHORISED USERS

- 7.1 The Authorised User of a Fuel Card whose name appears on the Fuel Card is the only person permitted to use that Fuel Card in respect of the Nominated Vehicle.
- 7.2 The Customer shall ensure that all Authorised Users comply with these Terms and Conditions.

8. PRICE

Motor Fuels and Shell LPG

- 8.1 The GST inclusive price for Motor Fuels and Shell LPG is the GST inclusive pump price at the time the fuel is purchased from the Nominated Premises less any agreed discount (expressed on a GST inclusive basis).

Other Products and Services

- 8.2 The GST inclusive price for Other Goods and Services is the GST inclusive retail price at the time the item is purchased from the Nominated Premises.

Non-Shell LPG

- 8.3 The GST inclusive price for Non-Shell LPG is the GST inclusive pump price at the time the Non-Shell LPG is purchased from the Nominated Premises.

9. CHARGES FOR USE OF FUEL CARD

- 9.1 For purchases made on the Customer's Fuel Card, Viva Energy will debit the Customer's Fuel Card account with:
- (a) the price of the Products as determined by clause 8;
 - (b) fees, including but not limited to monthly Fuel Card handling and administration fees and charges, as notified by Viva Energy from time to time, or fees and charges for any extended payment terms and/or a merchant acceptance fee which shall be imposed by Viva Energy upon providing written notice to Customer; and
 - (c) applicable government taxes and charges.

10. BILLING AND PAYMENT

Billing

- 10.1 Viva Energy will issue a transaction report for the Customer's Fuel Card account together with a tax invoice itemising all charges (including interest charges), taxes and fees payable, in accordance with the frequency set out in the Customer Account Application, Product Term Supply Agreement or GTC's (as applicable)(the "Billing Period").

Payment

- 10.2 Unless otherwise agreed, payment for the Products shall be made by the Customer no later than the due date stated on the tax invoice (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.
- 10.3 Payment shall be made by means of automatic debit by Viva Energy from the Customer's bank account, in accordance with clause 13.1, or as otherwise agreed.

Payment Default

- 10.4 Time is of the essence in relation to all payment terms in these Fuel Card Terms and Conditions.
- 10.5 If any amounts are not paid by the Due Date, Viva Energy may in its absolute discretion (acting reasonably):

- (a) 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);
- (b) recover the reasonable cost of recovering the overdue amount, such as legal or debt collection costs;
- (c) immediately and without prior notice, suspend or cancel the Customer's Fuel Card account;
- (d) review and adjust the Customer's credit limit and/or payment terms as Viva Energy considers appropriate; and/or
- (e) declare that all amounts owing by the Customer, whether invoiced or not, are immediately due and payable.

Disputed items

10.6 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.

10.7 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.

11. CREDITWORTHINESS AND SECURITY

Provision of security

11.1 Viva Energy may require the Customer to provide such security acceptable to Viva Energy.

11.2 The Customer will, if required by Viva Energy, provide to Viva Energy upon Viva Energy's request, additional security in line with Viva Energy's reasonable view of any increased credit exposure arising from the Customer.

Viva Energy may draw on security

11.3 Viva Energy shall be entitled to draw on such security for any monies owing to Viva Energy by the Customer under these General Terms and Conditions. If Viva Energy has to draw on the security for payment of monies due by the Customer, the Customer will top up the amount of the security to the original amount within 10 days of being notified by Viva Energy.

Additional security

11.4 In addition to any security provided under clause 11.1 above, Viva Energy may require the Customer to provide personal guarantees, guarantees from an Affiliate, a bank guarantee or letter of credit or such other security for payment of monies owed or to become owing by the Customer under this Agreement as Viva Energy, in its absolute discretion, considers appropriate.

Credit reviews

11.5 In order to satisfy itself of the ability of the Customer to meet its obligations under this Agreement, Viva Energy may conduct periodic credit reviews of the Customer, in accordance with standard commercial practices.

11.6 The Customer agrees to assist in these reviews by providing financial information and at the request of Viva Energy will provide and maintain such credit support as Viva Energy may reasonably request for protection against the risk of non-payment.

12. WARRANTIES AND LIMITATIONS ON LIABILITY

Warranties

- 12.1 It is acknowledged by the Customer that the Customer has made its own investigations and its own assessment of the suitability of the Products (including any services) for the use to which they will be put.
- 12.2 To the extent permissible by law all conditions, warranties, representations, assurances, or undertaking with respect to the description, merchantability, quality or fitness of the Products for any particular purpose are excluded.
- 12.3 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 Fuel Card.

Australian Consumer Law guarantees

- 12.4 Nothing in this Agreement 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").
- 12.5 Subject to clause 12.4, 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.

Limitations on liability

- 12.6 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.

13. DIRECT DEBIT SERVICE TERMS

Drawing Arrangements

- 13.1 The Customer acknowledges that by completing the bank account details and signing the Customer Account Application that moneys due to Viva Energy will be drawn from the Customer's nominated bank account and Viva Energy's Direct Debit Terms and Conditions as published on Viva Energy's website at www.vivaenergy.com.au/quick-links/customer-terms-and-conditions shall apply.

Customer responsible for checking financial institution details

- 13.2 It is the Customer's responsibility to ensure:
- (a) it has checked with its financial institution that direct debiting is available from the Customer's account;
 - (b) sufficient funds are available in the nominated bank account to meet a drawing on its Due Date;
 - (c) 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 based;
 - (d) that Viva Energy is advised if the bank account is transferred or closed; and

- (e) a suitable alternate payment method is arranged if the drawing arrangements are cancelled either by the Customer, the nominated bank or Viva Energy.

Credit Card Drawing Arrangement

- 13.3 If a credit card payment request is completed by the Customer and submitted to Viva Energy via the Application or by other means (Credit Card Authority Form), payment of the Customer's tax invoice will be made by auto direct debit against the nominated credit card from the date that the completed credit card section is processed by Viva Energy, or, if so notified in writing by Viva Energy to the credit card holder, with respect to the Customer's next tax invoice.
- 13.4 The Customer acknowledges that by signing the Credit Card Authority Form:
 - (a) monies due to Viva Energy will, subject to any notice to the contrary from Viva Energy, be drawn from the Customer's nominated credit card account;
 - (b) a surcharge as advised by Viva Energy (which is subject to change by Viva Energy with 30 days' notice) will apply to each application of the direct debit credit card drawing arrangement (for the avoidance of doubt, if the direct debit credit card drawing arrangement is applied to a tax invoice which has not included the surcharge, the surcharge with respect to that invoice is not waived and will be payable in addition to any new direct debit credit card surcharge in the next tax invoice).
- 13.5 Viva Energy will only initiate drawing against the credit card when a payment is due from the Customer.
- 13.6 Viva Energy will not change the amount or frequency of the drawings arrangement without the Customer's prior approval unless expressly permitted by these Terms and Conditions.
- 13.7 Viva Energy's drawing from the credit card nominated in this Application and the provision of authority by the credit cardholder does not in any way reduce, void or release the Customer from any unpaid monies or any surcharges or fees due.
- 13.8 No cancellation, termination or suspension of the credit card nor change to the credit card account or exercise of any rights in connection with the credit card by the credit card holder will diminish, void, vary any duty or obligation of the Customer or any right of Viva Energy against the Customer.
- 13.9 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 Terms & Conditions.
- 13.10 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.
- 13.11 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 and responsibilities

- 13.12 Subject to the Customer having arranged a suitable alternative payment method under clause 13.2, the Customer may, by giving written notice to Viva Energy:
 - (a) terminate the drawing arrangements;
 - (b) stop payment of a drawing; or
 - (c) 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.
- 13.13 The Customer shall immediately give notice to Viva Energy if a drawing has been completed incorrectly.
- 13.14 Where the Customer considers that a drawing has been initiated incorrectly the Customer should take the matter up directly and immediately with Viva Energy so that Viva Energy can investigate. Alternatively, the Customer may take it up directly with its financial institution. If Viva Energy conclude as a result of its investigations that a Customer's account has been incorrectly debited Viva Energy will respond to the Customer's query by arranging for the Customer's financial institution to adjust the Customer's account (including interest and charges) accordingly. Viva Energy will also notify the

Customer in writing of the amount by which the Customer's account has been adjusted. If Viva Energy conclude as a result of its investigations that a Customer's account has not been incorrectly debited Viva Energy will respond to the Customer's query by providing the Customer with reasons and any evidence for this finding in writing.

14. TAXES

Government Charges

- 14.1 Viva Energy has the right to charge the Customer's Fuel 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 Fuel Card transactions, whether or not the Customer is primarily liable for the impost or charge.

GST

- 14.2 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).
- 14.3 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.
- 14.4 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. (d) 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).

15. CHANGES IN CUSTOMER INFORMATION AND DATA PROTECTION

Changes in Customer's details

- 15.1 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 Fuel Card or other communication which differs from the address stated on the Customer Account Application 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

- 15.2 Where Viva Energy receives, collects or handles Personal Information while processing and administering the Customer's Fuel 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.
- 15.3 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.
- 15.4 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 Customer Account Application.

16. SHELL CARD PORTAL

Shell Card Portal

- 16.1 Access and use of the Shell Card Portal ("SCP") is available on a restricted basis to Customers:
- who have accepted these terms and conditions and registered for access in accordance with these terms and conditions; and
 - whose access has not been suspended or restricted by Viva Energy.

- 16.2 This clause 16 applies to the use of the SCP and the Customer agrees to be bound by:
- (a) the conditions in this clause 16 with respect to access and utilisation of any function of the SCP;
 - (b) these terms and conditions; and
 - (c) any additional terms, conditions, notices and disclaimers displayed elsewhere on the Shell Card Portal at <https://shellcardportal.shell.com.au/home>.
- 16.3 The Customer acknowledges that the SCP may be operated for Viva Energy by a third party as a subcontractor and that the computer systems on which the SCP and the underlying databases are stored may be located overseas.
- 16.4 While we use reasonable endeavours to ensure that the Viva Energy Customer Portal is available continuously, we do not make any representations or warranties that your access will be uninterrupted, timely, secure or error free.
- 16.5 The Customer agrees and acknowledges that the SCP and the copyright in all materials on the SCP, including but not limited to all text, information, graphics, animation, images, software and any other materials on the SCP (“Content”) and the arrangement of this Content are owned by or licensed to Viva Energy. The trade marks on the SCP and any other names, images and logos identifying Shell and its products and services (“Trade Marks”) are proprietary Trade Marks of an affiliate of Royal Dutch Shell plc. The names and logos of other companies and products mentioned on the SCP may be the Trade Marks of third parties, and are used by Viva Energy with the permission of their respective owners.
- 16.6 The Customer acknowledges that Viva Energy may change the format and Content of the SCP site at any time, or suspend the operation of the SCP for support or maintenance work or for any other reason, at any time without liability for any such change or suspension.

Shell Card Portal Authorised Users

- 16.7 During the registration process, the Customer may apply for access rights for 1 or more authorised users to the SCP (“SCP Authorised Users”) so the SCP Authorised Users can access the SCP to receive report information regarding the Customer’s Shell Card account, maintain the Shell Cards issued to the Customer (for example, by ordering, cancelling or limiting the use of Shell Cards) and/or to create and receive alert reports regarding the Customer’s Viva Energy Shell Card account, each where available.
- 16.8 The Customer will be able to add additional users via the Portal.
- 16.9 Viva Energy has sole discretion to set the number of the SCP Authorised Users of the Customer and may reject any application from the Customer for an the SCP Authorised User to be given access to the SCP.
- 16.10 The Customer must ensure that the SCP Authorised Users are aware of and comply with this clause 16 and, without limiting the other provisions of this clause 16, the Customer is responsible for all acts and omissions of the SCP Authorised Users.

Login ID and Password

- 16.11 The Customer must take all reasonable steps to protect the confidentiality of each login SCP ID and Password. The Customer may not permit, and must ensure that the SCP Authorised Users do not permit, any other person to access the SCP using the Customer’s or a SCP Authorised User’s login ID or Password.
- 16.12 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 SCP, and any charges incurred as a result of those activities, before Viva Energy receives notification of such unauthorised use or breach of security.
- 16.13 Viva Energy may at any time cancel or suspend any login ID or Password issued to the Customer or a SCP 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.

16.14 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, whether authorised or not, of a login ID or Password issued to the Customer or a SCP Authorised User. The Customer accepts full responsibility for all transactions thus made.

Use of the SCP

16.15 Provided the Customer complies with this clause 16, Viva Energy grants to the Customer a non-exclusive, non-transferable, limited right to enter, use and display the SCP. The Customer may download any Content on the SCP for which express permission has been given (e.g. online reports and statements) solely to the Customer's or its SCP Authorised Users' computers for the Customer's use. The Customer undertakes that it will not:

- (a) alter or remove any copyright, trade mark or other proprietary notice of Viva Energy or of any other company operating the SCP;
- (b) modify, frame or edit the Content of the SCP or publish or sell the Content including but not limited to making the Content available on any other website;
- (c) reverse, engineer, translate, adapt or modify any software used in connection with the SCP;
- (d) create any links from any other website to the SCP without Viva Energy's express prior written permission;
- (e) use any Content copied from the SCP for any business, commercial or public purpose (other than as specifically authorised in this clause 16); or
- (f) interrupt, interfere or attempt to interrupt or interfere with the operation of the SCP in any way.

16.16 The Customer uses the SCP site entirely at its own risk. Viva Energy reserves the right to deny the Customer or a SCP Authorised User access to the SCP at any time or to terminate the SCP 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 the SCP at any time.

16.17 The Customer may not do anything to interfere or attempt to interfere with the proper working of the SCP or the operation of networks connected to the SCP.

16.18 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 the SCP from time to time.

Status of Information

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

16.20 Viva Energy and the Customer agree that the transaction log kept by Viva Energy or on its behalf and made available within the SCP constitutes prima facie evidence that the SCP has been used to effect the matters stated in the transaction log against the Customer's account.

16.21 The Customer will regularly inspect the transaction log to monitor all transactions made using the SCP in respect of the Customer's account and the Customer must immediately notify Viva Energy of any suspected unauthorised transactions.

Privacy and Data Protection

16.22 The Customer:

- (a) acknowledges that it has read and understood the Viva Energy Privacy Policy available at www.vivaenergy.com.au (as amended from time to time) ("Privacy Policy"); and
- (b) consents to the use of its information in accordance with the Privacy Policy and the Customer warrants that each SCP Authorised User has consented to the use of their personal information in accordance with the Privacy Policy.

16.23 Viva Energy may use Cookies (pieces of programming) in accordance with the Cookies Policy contained in the Viva Energy Privacy Policy.

17. CHANGE IN THESE TERMS AND CONDITIONS

17.1 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 Fuel Card Terms and Conditions at <http://www.vivaenergy.com.au/quick-links/customer-terms-and-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 Fuel Card Terms and Conditions 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 Fuel Card after giving notice or publishing of the updated terms on the website (whichever occurs earlier).

18. NOTICES

18.1 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.

18.2 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.

19. GENERAL

Waiver

19.1 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

19.2 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

19.3 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

19.4 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

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

Trustee

19.6 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

- 19.7 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.