

Please read the following Trade Terms carefully. They apply to the Account and Product supplied or arranged to be supplied by TBG at the request of the Customer, from 01/10/2011.

## 1. DEFINITIONS AND INTERPRETATION

- 1.1 In this Agreement the words and phrases referred to below are defined as follows:
- a. "Account" means all accounts (however titled) provided by TBG at the request of the Customer, to record any transaction, purchase of Products or receipt of Products prior to payment.
  - b. "Address for Service" means the Postal/email address or fax number last notified by the Customer or Guarantor. PO Box 1136, Nelson 7040 for TBG.
  - c. "Application" means the "Fuelcard Application Form" or other TBG-approved form that a Customer must complete to make an application to TBG for the supply of Products on credit and/or the issue of a Fuelcard.
  - d. "Authorised Person" means a person to whom a Fuelcard is issued or who is otherwise authorised to use that Fuelcard.
  - e. "Card Signatory" means the person/legal entity named on and/or using a Fuelcard.
  - f. "Customer" means the purchaser of Product; the Card Signatory; the person/legal entity described in the Application, and/or the Customer of TBG, who apply for and open an Account or who operate the Account to record any transaction, buy Product from or through TBG.
  - g. "Default Event" means an event where:
    - aa. the Customer fails, or in TBG's opinion is likely to fail, to comply with the Trade Terms, or any other contract with TBG;
    - bb. the Customer commits an act of bankruptcy;
    - cc. the Customer enters into any composition or arrangement with creditors;
    - dd. if the Customer is a company:
      - i. does anything which would make it liable to be put into liquidation;
      - ii. fails to provide a certificate of solvency within 10 days of receiving a written demand from TBG;
      - iii. a receiver or statutory or official manager is appointed over all or any of its assets;
      - iv. a resolution is passed or an application is made for liquidation;
      - v. the ownership or effective control of the Customer or the Customer's business is transferred or the nature of the Customer's business is materially altered.
  - h. "Due Date" means the date notified by TBG to the Customer by which Sum Owing must be paid and if no date is specified, is by the 10th day of the month following the Statement month closing balance.
  - i. "Fuelcard" means any specified purchases credit/discount card, linked and used to debit the Account.
  - j. "Guarantor" means the guarantor(s) signing any Deed of Guarantee and Indemnity required by TBG.
  - k. "Invoice" means the business record of Products.
  - l. "Invoice Date" means the date recorded by TBG for any Products debited to the Account.
  - m. "Outlet" means those service stations, merchants, dealerships, depots and fuel dispensing facilities throughout New Zealand where Fuelcards are approved for use by TBG.
  - n. "PIN" stands for the Personal Identification Number for use with a Fuelcard.
  - o. "PPSA" means Personal Property Securities Act 1999.
  - p. "Product" means, in relation to purchases using Fuelcard, those goods and services authorised for purchase using Fuelcard from an Outlet, and in relation to purchases other than by using Fuelcard, the goods and services supplied to the Customer by TBG.
  - q. "Recommendation" means the best option for a given situation based on sources believed to be accurate.
  - r. "Statement" means TBG business record of Account transactions.
  - s. "Statement month closing balance" means the amount specified in the Statement month to be paid by Due Date.
  - t. "Sum Owing" means the Statement month closing balance (and subsequent Default Event costs) notified by TBG and includes all Fuelcard use.
  - u. "Supplier" means a supplier that TBG has a business relationship with.
  - v. "TBG" means The Buying Group Limited, any person or entity acting for or on behalf of The Buying Group Limited, or with the permission or authority of The Buying Group Limited.
  - w. "Trade Terms" means the terms relating to the operation of the Account and the supply of Products recorded on Invoice.
- 1.2 In this Agreement, unless the context otherwise requires or specifically otherwise states: (a) amounts are in New Zealand Dollars; (b) the singular includes the plural and vice versa; (c) time is of the essence.

## 2. SUM OWING

- 2.1 The Customer shall pay the Sum Owing to TBG:
- a. in full without any deductions, whether by way of set off, counter claim, or any other equitable legal claim;
  - b. by automatic bank direct debit initiated by TBG.
- 2.2 The Sum Owing may include:
- a. goods and services tax and any other taxes, duties and levies payable in respect of the Products at the date of Invoice, and
  - b. the amount of any increase in the cost of the Product added by a Supplier due to an accounting error.

## 3. PAYMENT

- 3.1 The Customer shall pay the Sum Owing to TBG by the Due Date.
- 3.2 TBG may apply any payment received from or on behalf of the Customer (including payment due by TBG to the Customer) in reduction of the Sum Owing as TBG thinks fit to preserve any purchase money security interest it has in the Products.
- 3.3 The Customer acknowledges:
- a. TBG continues to supply and arrange the supply of Products on condition that all payments received by TBG from the Customer are valid and made in the ordinary course of the Customer's business;
  - b. TBG receives all payments in the ordinary course of the Customer's business and in good faith and in the reasonably held belief as to the validity of those payments;
  - c. the understanding of TBG towards its business with the Customer shall apply until the Customer gives notice in writing to TBG of the Customer's inability to pay due debts and that the Customer's purpose in making further payment is to enable TBG to receive more towards satisfaction of the Sum Owing than it would otherwise have received or have been likely to have received in any liquidation/insolvency of the Customer;
  - d. TBG has, in accepting each Customer payment, altered its position in reliance on the validity of each payment:
    - aa. by delaying revocation of the authority granted to the Customer in clause 5.5b;
    - bb. by the continued supply of Products after the receipt of each payment whether or not the Customer pays for the Products;
    - cc. if payment is received after Due Date by foregoing its right to commence recovery action against the Customer, or Guarantor.

## 4. SUPPLY

- 4.1 The supply of Products shall be completed upon:
- a. despatch from TBG;
  - b. despatch/supply from TBG Supplier when supplied direct to the Customer.
- 4.2 TBG shall not:
- a. be liable for failure to supply, refusal to supply, defective supply of Products;

- b. guarantee a continuing relationship with any supplier of the Products.

## 5. RISK AND SECURITY INTEREST

- 5.1 Risk of any loss, damage or deterioration to the Products passes to the Customer upon supply.
- 5.2 Ownership in the Products remains with TBG and does not pass to the Customer until the Customer pays the Sum Owing to TBG.
- 5.3 Until payment of the Sum Owing the Customer shall insure the Products for their full insurable value with TBG interest noted on the relevant insurance policy.
- 5.4 The Customer grants a security interest in the Products to TBG as security for payment of the Products, and for any other amounts from time to time owing by the Customer to TBG, and for the performance by the Customer of all Customer's other obligations to TBG ("Customer's indebtedness and obligations"). For the purposes of, and to ensure a maximum benefit and protection for TBG by virtue of the PPSA (s36), the Customer confirms and agrees that the Customer intends to, and does grant to TBG, a security interest in all of the Customer's present and after acquired property as security for the Customer's indebtedness and obligations.
- 5.5 While ownership of the Products remains with TBG and the Products secure the Customer's indebtedness and obligations:
- a. the Customer must store the Products separately, not mix them, and identify them as belonging to TBG.
  - b. TBG authorises the Customer in the ordinary course of the Customer's business to only use the Products; resale is not permitted.
  - c. the authority in 5.5b is revoked when:
    - i. a Default Event occurs; or
    - ii. TBG notifies the Customer that the Customer authority is revoked.
  - d. if the Products (for which payment has not been made) are not kept in a manner so as to enable the Products to be clearly identified as the property of TBG, then TBG is deemed to be the owner of the quantity of the Products equivalent to the quantity of the Products for which payment has not been made.
  - e. The Customer must advise TBG immediately of a Default Event or any action by third parties (including any of the Customer's creditors) affecting TBG security interest in the Products.
  - f. as the Customer's agent (and pursuant to an irrevocable licence granted by the Customer) TBG may enter the premises where the Products are stored and remove them, without being responsible for any damage caused and the Customer shall indemnify TBG against any claim or costs arising from such action.
  - g. TBG may resell any of the Products and apply the proceeds of sale in reduction of the Sum Owing.
- 5.6 The Customer agrees to promptly do anything that TBG reasonably requires to:
- a. ensure that TBG has a first ranking perfected security interest in all of the Products (and any sale proceeds); and
  - b. enable registration of a financing statement or financing change statement under the PPSA.
- 5.7 If the Customer resells or uses the Products before ownership in the Products has passed to the Customer, the proceeds of such sale or use shall be received and held by the Customer (in whatever form) in trust for both the Customer and TBG. TBG interest as beneficiary under that trust shall be that portion of the proceeds which does not exceed the Sum Owing. The balance proceeds (if any) shall be the Customer's beneficial interest under that trust.
- 5.8 TBG may commence an action for the Sum Owing when ownership of the Products may not have passed to the Customer.

## 6. CONTRACTING OUT OF THE PPSA

- 6.1 The Customer:
- a. Agrees that these Trade Terms constitute a security agreement for the purposes of the PPSA;
  - b. Agrees that a security interest is taken in all Products previously supplied by TBG to the Customer (if any) and all Products that will be supplied in the future by TBG to the Customer.
  - c. Shall sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which TBG may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
  - d. Shall not register a financing statement or a change demand without the prior written consent of TBG;
  - e. agrees that sections 114, 133 and 134 of the PPSA shall not apply to these Trade Terms, or the security interest under these Trade Terms;
  - f. waives and contracts out of the Customer's rights as detailed in sections 107, 116 to 132 inclusive of the PPSA;
  - g. undertakes to indemnify and, upon demand, reimburse TBG for all costs, expenses and other charges incurred in relation to:
    - aa. the registering of a financing statement or financing change statement on the Personal Property Securities Register;
    - bb. any disputes or negotiations with third parties claiming an interest in the Products; in connection with these Trade Terms.
- 6.2 The Customer waives the right to receive a copy of the verification statement confirming registration of a financing statement or financing change statement relating to the security interest under the Trade Terms.
- 6.3 The Customer shall unconditionally ratify any actions taken by TBG under clauses 6 to 6.2.

## 7. CLAIMS AND LIABILITY LIMITATION

- 7.1 Except as provided in any express warranty given and to the extent permitted by law, TBG:
- a. excludes all warranties, descriptions, representations or conditions whether implied by law, trade, custom or otherwise and whether relating to fitness, merchantability, suitability for purpose, or otherwise and all specific conditions even though such conditions may be known to TBG;
  - b. excludes liability in any way to the Customer or any third party, whether in tort (including negligence), contract, or otherwise, for any loss or damage whatsoever whether direct, or indirect, special, or consequential, and the Customer indemnifies TBG against any such claim;
  - c. states that any liability in respect of the Products shall be limited to the price of the Products;
  - d. advises that it does not intend to contract out of the provisions of the Consumer Guarantees Act 1993 except to the extent permitted by that Act.
- 7.2 Without limiting any other provision in these Trade Terms, TBG is not liable to the Customer, whether directly or indirectly for:
- a. the actions of any Outlet;
  - b. any Products purchased on Fuelcard, in accordance with clause 7.8 (unless otherwise stated in these Trade Terms);
  - c. any fault with any automatic facility used in conjunction with the Fuelcard;
  - d. any fault with the Fuelcard (including the PIN) itself;
  - e. any fault with the electronic system which processes the Fuelcard transaction;
  - f. any unauthorised use, misuse or fraud with a Fuelcard and/or PIN where TBG has not received written notification of cancellation from the Buyer in accordance with clause 8.3h;
  - g. any unauthorised use, misuse or fraud with a Fuelcard and/or PIN where TBG has not received written notification of cancellation AND the returned Fuelcard from the Buyer in accordance with clause 8.4.
- 7.3 TBG may at its complete discretion, give credit for the Products not supplied or incorrectly recorded; or supplied and established to be defective provided that:

- a. any claim or dispute of a business record on an Invoice or Statement must be notified to TBG within 10 days following the date of the business record or delivery of the Products together with all supporting documentation;
- b. all claims must specifically identify the incorrect business record or defect;
- c. the Customer shall take all steps to ensure that TBG has every opportunity to investigate the claim.
- 7.4 Unless TBG accepts a correction should be made, the Customer acknowledges that excluding a Default Event each Invoice and Statement is the only business record for the Account.
- 7.5 The decision by TBG in respect of a Customer claim shall be accepted as conclusive and binding by the Customer, and shall not be removable into any Court or restrainable by injunction.
- 7.6 If the Customer acquires the Goods for business purposes the Consumer Guarantees Act 1993 does not apply to the Goods. (In the absence of express written acknowledgement by TBG to the contrary the application by the Customer for an Account is determination that the Customer acquires Products for "business purposes".)
- 7.7 The Customer is not permitted to on sell the Products. The Customer indemnifies TBG against any liability or costs, incurred by TBG under the Consumer Guarantees Act 1993, as a result of any breach by the Customer of the Trade Terms.
- 7.8 The provisions of the Contractual Remedies Act 1979 shall apply to this contract as if section 15(d) were omitted from the Contractual Remedies Act 1979.
- 8. THE TBG FUELCARD**
- 8.1 TBG and/or the Supplier retain ownership of any Fuelcard issued to a Customer.
- 8.2 Fuelcard is issued by TBG to the Customer for use in conjunction with a Supplier. The Customer is responsible for:
- ensuring that the Authorised Person/Card Signatory complies with the Trade Terms;
  - any use of a Fuelcard whether authorised or not.
- 8.3 The Authorised Person/Card Signatory must:
- immediately sign the Fuelcard when it is received and not use it until it is signed;
  - not use the Customer Account number as a PIN;
  - keep the PIN secure;
  - not allow anyone else to use the Fuelcard or PIN;
  - not attempt to obtain cash for refund of Products or be party to negotiation for direct "cash" discounts with a Supplier;
  - ensure that the Invoice correctly records all details relating to the Products;
  - where a credit is due from a Supplier, ensure that the credit is passed in favour of TBG for the Customer;
  - notify TBG immediately the Fuelcard is lost, stolen, misused, or the PINS disclosed. Liability for Products purchased by the unauthorised use of the Fuelcard (except where it results from fraud or negligence), shall cease upon written acknowledgement of this notification;
  - return or destroy the Fuelcard when required to do so, or the Account is closed.
- 8.4 The Customer:
- may cancel a Fuelcard where it is no longer required by returning it to TBG;
  - must return any cancelled Fuelcard (unless lost or stolen), cut in half, to TBG. The Customer will remain liable for all transactions recorded against a cancelled Fuelcard until such time as the cancelled Fuelcard is actually received by TBG (except where the Fuelcard is cancelled pursuant to clause 8.3h).
- 8.5 TBG shall not be responsible for:
- any dispute between the Customer/ Card Signatory/ Authorised Person;
  - any dispute between the Customer/ Card Signatory/ Authorised Person, and any Supplier;
  - any dispute between the Customer/ Card Signatory/ Authorised Person, and any Outlet;
  - the actions of any Supplier;
  - any credit due by a Supplier to a Customer until notification of such credit is received from the Supplier;
  - any losses caused by occurrences beyond its control where a Fuelcard is unable to be used.
- 8.6 The Card Signatory shall be jointly and severally liable with the Customer to pay for all Products purchased with a Fuelcard.
- 8.7 The Customer and Card Signatory agree that neither of them shall join TBG as a party to any claim involving a Supplier and expressly agree that any breach of this term is a Default Event.
- 9. FEES**
- 9.1 The Customer will pay to TBG:
- the current monthly card fee per Fuelcard;
  - a replacement card fee for any replacement Fuelcards;
  - the current transaction fee for each transaction on a Fuelcard;
  - a dishonour fee if any payment by the Customer is dishonoured or delayed;
  - any other fees charged by TBG, including fees charged for fuel management reports.
- 9.2 TBG reserves the right to vary these fees without notice to the Customer.
- 10. DEFAULT AND CONSEQUENCES OF NON PAYMENT**
- 10.1 Should a Default Event occur TBG may suspend or cancel any Fuelcard and the Account, and the Sum Owing shall immediately become due and payable notwithstanding that the Due Date has not arrived.
- 10.2 If the Customer does not pay the Sum Owing by the Due Date:
- TBG may charge interest at the rate of 2.5% per month (or such other rate as shall be notified on its website) in respect of the Sum Owing. Such interest shall accrue on a daily basis from the Invoice Date until payment in full and is charged by way of damages for failure to pay and does not imply the granting of, or extension of, credit by TBG to the Customer.
  - If the Sum Owing remains overdue after thirty (30) days then an amount of \$20.00 or 10.00% of the amount overdue (up to a maximum of \$200), whichever is the greater, shall be charged for administration fees and shall become immediately due and payable.
  - TBG may reverse any discounts recorded on the Account Invoices and Statements.
  - TBG may debit any other account the Customer may have to pay the Sum Owing.
  - TBG may make demand on the Card Signatory;
  - the Customer and the Card Signatory shall be liable to pay for, and shall separately indemnify TBG against all Account transaction fees as may be deemed appropriate by TBG, administration collection costs, legal costs of TBG as between solicitor and client, and any collection commissions, incurred as a consequence of a Default Event.
- 10.3 TBG shall have the right (at its discretion) to complete and register an all obligations mortgage (Registrar General of Land approval 1998/2072) or caveat over any property owned by the Customer to secure the Sum Owing and the Customer irrevocably appoints a director of TBG as the attorney of the Customer for the purpose of completing such mortgage or caveat whilst the Sum Owing remains unpaid.
- 11. THE PRIVACY ACT 1993 INFORMATION USE**
- 11.1 The Customer, Card Signatory and Guarantor agree that:
- the personal information provided, obtained and retained by TBG about them (including personal information about Customer/Guarantor directors, officers or trustees) will be held and used for any or all of the following purposes including determining eligibility for credit, the supply of Products, enforcing debt and legal obligations under the Trade Terms the marketing of goods and services including emails and market research by TBG and any other TBG supplier.
  - the Trade Terms is the Customer, Card Signatory, Guarantor irrevocable authority to TBG to:
    - use any personal information for the purposes in clause 11.1a;
- provide any personal information (along with details of any dealings between the Customer, Card Signatory, Guarantor and TBG) to any third party (including a credit reporter where the personal information is able to be accessed for genuine credit related purposes by other credit inquirers);
  - obtain any information concerning the Customer, Card Signatory, Guarantor (including personal information about Customer/Guarantor directors, officers or trustees) from any other source for TBG business with the Customer, Card Signatory and Guarantor.
- 11.2 the Customer, Card Signatory, Guarantor must notify TBG of any change in circumstances that may affect the accuracy of the information provided by them to TBG.
- 11.3 The Customer, Card Signatory, Guarantor as a natural person and the Customer/Guarantor directors, officers or trustees, have rights of access to, and correction of any personal information held by TBG.
- 11.4 Where the Customer and/or Guarantors are an individual the authorities under clause 11.1a are authorities or consents for the purposes of the Privacy Act 1993.
- 11.5 The Customer and/or Guarantors shall have the right to request from TBG, a copy of the information about the Customer and/or Guarantors retained by TBG and the right to request TBG to correct any incorrect information about the Customer and/or Guarantors held by TBG.
- 12. ASSIGNMENT/CANCELLATION**
- 12.1 TBG shall be entitled to assign to any other person or company all or part of the Sum Owing and the assignee shall be entitled to claim all or part of the Sum Owing and shall have the same rights of recovery as TBG.
- 12.2 TBG may assign this Agreement to any third party.
- 12.3 TBG shall be entitled to cancel all or any part of the Trade Terms at any time with or without prior notice. Any such cancellation shall be without prejudice to TBG's rights and remedies including, but not limited to, those which may arise from any breach or non-compliance by the Customer.
- 13. OTHER SUPPLY TERMS**
- 13.1 If there is any inconsistency between the Trade Terms and any order submitted by the Customer, or any other arrangement between the parties, the Trade Terms shall prevail unless otherwise agreed in writing by the parties.
- 13.2 The Customer/Card Signatory shall not approach any Supplier for direct discounts, use the name of TBG, or reveal Supplier trading terms in any attempt to obtain personal discounts from businesses not associated with TBG. A breach of this term shall be a Default Event.
- 14. WAIVER**
- 14.1 If at any time TBG does not enforce the Trade Terms, or grants the Customer time or other indulgence, TBG shall not be construed as having waived the Trade Terms or its right to later enforce the Trade Terms.
- 15. TERMS SEPARATELY BINDING**
- 15.1 Each clause of the Trade Terms is separately binding. Where any provision is void, unenforceable or otherwise ineffective by operation of law the enforceability or effectiveness of the remaining clauses shall not be affected.
- 16. CHANGING THE TRADE TERMS**
- 16.1 TBG may add, change or remove clauses in the Trade Terms.
- TBG can change the Trade Terms at any time without obtaining the consent of the Customer.
  - TBG may advise when changes to the Trade Terms are to take effect by notice to the Customer's Address for Service.
  - By signing the Application/Guarantee, using the Account the Customer/Guarantor acknowledges that the Trade Terms apply to the Account.
  - The Customer acknowledged receiving a copy of the Trade Terms prior to signing the Application. A further copy can be obtained from TBG at the Address for Service or by downloading from the TBG website [www.thebuyinggroup.co.nz](http://www.thebuyinggroup.co.nz).
- 17. SENDING BILLS AND NOTICES AND SERVING DOCUMENTS**
- 17.1 TBG will send or deliver its invoices, statements, notices, documents, or newsletters to the Address for Service. The Customer, Card Signatory and Guarantor agree and acknowledge any:
- invoice, statement, notice has been received 4 days after it has been sent;
  - facsimile has been received upon confirmation of transmission;
  - document has been served and received on the date of delivery;
  - email has been received within 1 day after it has been sent.
- 17.2 The Customer:
- must inform TBG giving not less than 14 days prior notice in writing (addressed to the General Manager):
    - of any proposed change in the Customer name;
    - if the Address for Service, contact phone number/email address is changed, or the Account is to be closed;
  - remains liable for the Sum Owing, all Fuelcard use, and all invoices debited to the Account where TBG has not acknowledged in writing receipt of the Customer instructions to close the Account.
- 18. USE OF GOODS**
- 18.1 The Customer/Card Signatory has considered and accepts the advice, information or Recommendation provided by TBG, or a Supplier, to the Customer /Card Signatory relating to the Products, or Recommendation alone, is given in good faith and based on the information provided by the Customer/Card Signatory. The decision to order and use the Products, or follow the Recommendation is that of the Customer/Card Signatory and is made of the Customer's/Card Signatory's own volition.
- 19. RETURNS**
- 19.1 Where TBG at its discretion allows the Customer to return the Products (not defective or non complying), TBG reserves the right to charge, in addition to any delivery costs, a return fee.
- 20. CIRCUMSTANCES BEYOND CONTROL**
- 20.1 TBG shall not be liable for any failure to supply the Products, or to meet any other obligations owed to the Customer.
- 21. LEGAL FORUM**
- 21.1 The Customer acknowledges that any dispute or legal proceedings between the Customer and TBG shall be filed in and be heard at either the Disputes Tribunal or the District Court at Nelson, or the High Court at Nelson. The parties to the Trade Terms expressly acknowledge that the cause of action or a material part thereof arises within the jurisdiction of the Disputes Tribunal or the District Court at Nelson, or the High Court at Nelson.
- 21.2 The Trade Terms is subject to and governed by New Zealand law. The language of the Trade Terms shall only be 'English'.