

**Part 1** (to be completed if the Customer is one of the following legal entities together with Parts 3,4,5, 6 and 7)

Legal entity:  Company  Partnership  Trust  Incorporated Society  Other (specify):

(Please note that you are required to complete the Guarantee & Indemnity form)

Full Customer legal name: \_\_\_\_\_

Trading name (if different): \_\_\_\_\_ Business Contact Details:

Street Address: \_\_\_\_\_ Name: \_\_\_\_\_  
 (include post code) \_\_\_\_\_ Position: \_\_\_\_\_

Postal Address: \_\_\_\_\_ Mobile: \_\_\_\_\_  
 (include post code) \_\_\_\_\_ Fax No.: \_\_\_\_\_

Email: \_\_\_\_\_

Details of all:  directors;  officers;  partners;  trustees;  other (specify)

(If more than 3, photocopy this section and attach to application)

First name: \_\_\_\_\_ Middle names: \_\_\_\_\_ Last Name: \_\_\_\_\_

Date of birth: \_\_\_\_\_ Home phone: \_\_\_\_\_ Mobile: \_\_\_\_\_

Drivers Licence No.: \_\_\_\_\_ Version No.: \_\_\_\_\_ Section 5b on Drivers Licence Male/Female

Residential Address: \_\_\_\_\_

Do you:  own  rent this property? If you have lived at this residential address for less than 5 years please list previous address.

First name: \_\_\_\_\_ Middle names: \_\_\_\_\_ Last Name: \_\_\_\_\_

Date of birth: \_\_\_\_\_ Home phone: \_\_\_\_\_ Mobile: \_\_\_\_\_

Drivers Licence No.: \_\_\_\_\_ Version No.: \_\_\_\_\_ Section 5b on Drivers Licence Male/Female

Residential Address: \_\_\_\_\_

Do you:  own  rent this property? If you have lived at this residential address for less than 5 years please list previous address.

First name: \_\_\_\_\_ Middle names: \_\_\_\_\_ Last Name: \_\_\_\_\_

Date of birth: \_\_\_\_\_ Home phone: \_\_\_\_\_ Mobile: \_\_\_\_\_

Drivers Licence No.: \_\_\_\_\_ Version No.: \_\_\_\_\_ Section 5b on Drivers Licence Male/Female

Residential Address: \_\_\_\_\_

Do you:  own  rent this property? If you have lived at this residential address for less than 5 years please list previous address.

**Part 2 Individual** (To be completed if the Customer legal entity is an Individual together with Parts 3,4,6 and 7)

First name: \_\_\_\_\_ Middle names: \_\_\_\_\_ Last Name: \_\_\_\_\_

Date of birth: \_\_\_\_\_ Home phone: \_\_\_\_\_ Mobile: \_\_\_\_\_

Work no.: \_\_\_\_\_ Fax no.: \_\_\_\_\_ Email: \_\_\_\_\_

Drivers Licence No.: \_\_\_\_\_ Version No.: \_\_\_\_\_ Section 5b on Drivers Licence Male/Female

Postal Address: \_\_\_\_\_

Residential Address: \_\_\_\_\_

Do you:  own  rent this property? If you have lived at this residential address for less than 5 years please list previous address.

**Part 3**      **General Information**

Type of business: \_\_\_\_\_ No. Years trading: \_\_\_\_\_ Company No.: \_\_\_\_\_ Paid up Capital: \_\_\_\_\_

Accounts contact person: \_\_\_\_\_ Accounts Email address: \_\_\_\_\_

Monthly Fuel Expenditure: \_\_\_\_\_

**Credit/Trade References** (Not including banks, credit card companies, telephone, power or fuel companies)

1. Business Name: \_\_\_\_\_ Contact Name: \_\_\_\_\_ Phone: \_\_\_\_\_

2. Business Name: \_\_\_\_\_ Contact Name: \_\_\_\_\_ Phone: \_\_\_\_\_

3. Business Name: \_\_\_\_\_ Contact Name: \_\_\_\_\_ Phone: \_\_\_\_\_

**Security Contact Details:**

For security purposes, a contact name and password is required for all account enquiries, new PIN's, new cards, any changes to the account and the release of any information. Please nominate a contact person and password.

Contact name: \_\_\_\_\_ Password: \_\_\_\_\_

Password reminder: \_\_\_\_\_

**Part 4 - Confirmation, acceptance and signing****The Applicant:**

- a) confirms that the information provided is true and correct and acknowledges that The Buying Group Limited may be entitled to close the Account, if the information is incorrect.
- b) confirms that no information has been withheld which The Buying Group Limited should be aware of in considering the Application.
- c) accepts that the Application and the Account Trade Terms are the only basis on which The Buying Group Limited agrees to open the Account.
- d) accepts that ownership of the Products is subject to the "Risk and Security Interest" section in the Account Trade Terms.
- e) accepts that The Buying Group Limited may obtain, use and disclose information for credit assessment, debt collection and marketing information as set out in the "Information Use" section in the Account Trade Terms.
- f) confirms that the Account Trade Terms have been provided by The Buying Group Limited.
- g) agrees to be bound by the Account Trade Terms and further acknowledges that the use of any Fuelcard, the supply of or arrangement to supply Products, is acceptance of the Account Trade Terms.
- h) acknowledges (where necessary) that the signatory has the authority of the Customer to sign the Application.

The signatory acknowledges that if the Customer denies liability to pay The Buying Group Limited and disclaims and proves that the signatory had no authority to open the Account for the Customer, the signatory shall be bound by the Trade Terms as if the signatory was the Customer, and the signatory shall be liable to pay all money and interest debited to the Account together with any costs incurred as a consequence of payment default.

**IMPORTANT!** To allow TBG to process your application **all** persons named on the application must sign below.**Print full name of signatory****Signature****Date**

_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

**Please include the following with your application:**

Completed Direct Debit Authority

Fuelcard Order Form

Signed Personal Guarantee – for all applicants applying in Part 1.

**Please post completed forms to:**

The Buying Group Limited

PO Box 1136

Nelson 7040

Phone 03 539 0623

# Part 5 Deed of Guarantee and Indemnity in favour of The Buying Group Limited (TBG)

(to be signed by all officers, partners, trustees, other, signing Part 1 of the Application)

Definitions of words are set out in The Buying Group Limited Trade Terms

Customer: (Print full name(s) listed in Part 1 of the Application): \_\_\_\_\_

Guarantor(s): (Print full name(s)): \_\_\_\_\_

## Guarantee and Indemnity

In consideration of goods and services provided by or arranged through TBG at the request of the Customer, I/We jointly and severally:

### 1. Guarantee:

1.1 the due and punctual payment to TBG by the Customer by the Due Date, or upon demand, the Sum Owing and all other monies which are presently owing or which may in the future become owing to TBG by the Customer, in respect of goods and services provided by or arranged through TBG for the Customer, or which may otherwise become payable by the Customer to TBG.

### 2. Acknowledge:

2.1 TBG may at any time in its discretion and without giving notice refuse further credit to the Customer.

2.2 agreement to be bound as principal debtor(s) so that the liability of me/each of us under this Guarantee shall not be released by any delay or other indulgence or concession which TBG may grant to the Customer or any compromise which TBG may reach or variation TBG may agree with the Customer or me/any of us, or by any other act, matter, circumstance of law whereby I/we would but for the provision of this clause have been released from my/our liability under the Guarantee.

2.3 I/we will not in any way compete with TBG for payment in the event of bankruptcy or liquidation of the Customer.

2.4 this guarantee is in addition to, and not in substitution for, any other security or rights which TBG may presently have or may subsequently acquire and this Guarantee may be enforced against me/each of us without having recourse to any such securities or rights and without making demand or taking proceedings against the Customer or the other of us.

2.5 this guarantee shall bind my/our respective personal representatives.

2.6 TBG may, in the event of default in payment by the Customer and the Guarantor(s) complete and register an all obligations mortgage (Registrar General of Land approval 1998/2072) and/or caveat at

my/our cost over any of my/our property to secure the Sum Owing and all other monies owed by the Customer to TBG and for that purpose I/ we irrevocably appoint a director of TBG as my/our attorney for the purpose of completing the mortgage and/or caveat.

2.7 there is no right to cancel, discontinue or otherwise affect the liability under this Guarantee and Indemnity except by Guarantor written notice to TBG at its Address for Service.

2.8 the Guarantee and Indemnity shall remain in full force and effect and shall not be deemed to have been released or discharged or in any way vacated until TBG has acknowledged in writing that the Guarantee and Indemnity is released.

### 3. Agree:

3.1 independently of the Guarantee to indemnify TBG against all damages, claims and losses (including costs) which TBG may suffer or incur as a result of any failure by the Customer to make due and punctual payment of the monies detailed in clause 1 of this guarantee and indemnity whether or not the liability of the Customer is or has become void or unenforceable for any reason and whether or not the foregoing guarantee shall be void or unenforceable against me/us or any of us for any reason.

3.2 this Guarantee and Indemnity shall be an unconditional and continuing Guarantee and Indemnity and shall be irrevocable and shall remain in full force and effect until all the monies owing to TBG by the Customer and all the obligations under the Account and TBG Trade Terms have been fully paid, satisfied or performed.

3.3 if the Customer is or includes –

3.3.1 a trust or person acting as trustee of a trust;

3.3.2 a limited liability company;

then "Customer" in this Guarantee and Indemnity shall include all present/future trustees of that trust and all present/future shareholders and directors of the limited liability company.

### Guarantor 1

Signature: \_\_\_\_\_

Full Name: \_\_\_\_\_

Address for Service: \_\_\_\_\_

\_\_\_\_\_

Date of Birth: \_\_\_\_/\_\_\_\_/\_\_\_\_

Signature of witness: \_\_\_\_\_

Name of Witness: \_\_\_\_\_

Present Address: \_\_\_\_\_

Occupation: \_\_\_\_\_

### Guarantor 2

Signature: \_\_\_\_\_

Full Name: \_\_\_\_\_

Address for Service \_\_\_\_\_

\_\_\_\_\_

Date of Birth: \_\_\_\_/\_\_\_\_/\_\_\_\_

Signature of witness: \_\_\_\_\_

Name of Witness: \_\_\_\_\_

Present Address: \_\_\_\_\_

Occupation: \_\_\_\_\_

I/We acknowledge that TBG has recommended that I/we obtain independent legal advice as to the effect of the Guarantee and Indemnity and the potential liability faced by me as guarantor(s) and indemnifier(s). I/We confirm that I/we have obtained, or elected not to obtain, such independent legal advice and have agreed to provide the Guarantee and Indemnity.

Guarantor 1 Signature: \_\_\_\_\_

Dated as a Deed on \_\_\_\_/\_\_\_\_/\_\_\_\_

Guarantor 2 Signature: \_\_\_\_\_

Dated as a Deed on \_\_\_\_/\_\_\_\_/\_\_\_\_

Please tick the BP, Caltex, Mobil, PL  
and/or Z columns to specify cards.

Driver Name or Vehicle Registration	Vehicle Description (i.e. make, model, colour)	Purchase Limit Code (select from codes below)	Daily Card Credit Limit \$	Monthly Card Credit Limit \$	Odo? (Y/N)	Cost Ctr or Fleet ID (max 8 chrs)	BP	Caltex	Mobil	Petroleum Logistics	Z (Shell)	PIN No for BP, Mobil, PL, and Z (see notes below)

At the following link is a map showing the locations of all the fuel companies' service stations and truckstops in NZ:  
[www.thebuyinggroup.co.nz/fuelcardmap](http://www.thebuyinggroup.co.nz/fuelcardmap)

#### Purchase Limit Codes:

All Purchases	000	Petrol/Oil only	001
Diesel / Oil only	002	Fuel / Oil only	019
Petrol/Diesel only	042	Fuel only	053
All Purchases to \$150	009		
Other – please specify:			

#### Notes:

- 1 All Fuelcards have credit limits loaded, so please specify above the \$ amount for each Fuelcard.
- 2 All Fuelcards are issued with a PIN. You can specify a specific PIN for each Fuelcard in the table above, or if you prefer, by contacting The Buying Group Ltd on (03) 539 0623.
- 3 In relation to PINs:
  - a. If you do not specify one at the time of ordering:
    - i) BP, Petroleum Logistics & Z will issue a randomly generated PIN. As the PIN is encrypted onto the Fuelcard, **the PIN cannot be changed once issued**. Instead, a new Fuelcard will have to be issued if a different PIN is required.
    - ii) Mobil will send out a randomly generated PIN that can be changed without requiring a replacement card. Contact The Buying Group Ltd to arrange.
  - b. Caltex loads the PIN onto the Fuelcard at the time the Fuelcard is first used by you. This PIN can be changed without having to re-issue the Fuelcard by contacting The Buying Group Ltd.

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):
    - if 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'.

Name of account to be debited: \_\_\_\_\_

**AUTHORITY TO ACCEPT DIRECT DEBITS**  
(Not to operate as an assignment or agreement)

Account details:

Bank						Branch						Account Number				Suffix	

**AUTHORISATION CODE**

1	2	0	7	1	8	6
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To: The Manager,

Bank and Branch: \_\_\_\_\_

Address (PO Box ): \_\_\_\_\_

Town/City: \_\_\_\_\_

I/We authorise you until further notice in writing to debit my/our account with you all amounts which

**THE BUYING GROUP LIMITED**  
(hereinafter referred to as the Initiator)

the registered Initiator of the above Authorisation Code may initiate by Direct Debit. I/We acknowledge and accept that the bank accepts this authority only upon the conditions listed on the reverse of this form.

**Information to appear in my/our bank statement:**

PAYER PARTICULARS	PAYER CODE	PAYER REFERENCE
T H E B U Y I N G G R O U P	F U E L C A R D	

Bank Account Holder(s) to complete

AUTHORISED SIGNATURE(S): \_\_\_\_\_ DATE: \_\_\_\_\_

<p>Approved</p> <p><u>0718</u> 09/12</p>	For Bank Use Only	<p>Date Received:</p>	<p>Recorded By:</p>	<p>Checked By:</p>	<p>BANK STAMP</p>
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**CONDITIONS OF THIS AUTHORITY**

- The Initiator:**
  - (a) has agreed to give written advance notice of the net amount of each Direct Debit and the due date of debiting *at least 10 calendar days before* (but not more than 2 calendar months) the date the Direct Debit will be initiated. The advance notice will be provided either: (i) in writing; or (ii) by electronic mail where the Customer has provided prior written consent to the Initiator. The advance notice will include the following message: "Unless advice to the contrary is received from you by (\*date), the amount of \$\_\_\_\_\_ will be directly debited to your Bank account on (initiating date)." \*This date will be at least two (2) days prior to the due date to allow for the amendment of Direct Debits.
  - (b) may, upon the relationship which gave rise to this Authority being terminated, give notice to the Bank that no further Direct Debits are to be initiated under the Authority. Upon receipt of such notice the Bank may terminate this Authority as to future payments by notice in writing to me/us.
  - (c) may rely on this authority to debit a different bank account upon receipt of instructions from the customer via a bank to which their account has been transferred.
- The Customer may:**
  - (a) At any time, terminate this Authority as to future payments by giving written (or by the means previously agreed in writing) notice of termination to the Bank and to the Initiator; (b) Stop payment of any Direct Debit to be initiated under this Authority by the Initiator by giving written notice to the Bank *prior* to the Direct Debit being paid by the Bank.
- The Customer acknowledges that:**
  - (a) This authority will remain in full force and effect in respect of all Direct Debits made from my/our account in good faith notwithstanding my/our death, bankruptcy or other revocation of this authority until actual notice of such event is received by the Bank.
  - (b) In any event this Authority is subject to any arrangement now or hereafter existing between me/us and the Bank in relation to my/our account.
  - (c) Any dispute as to the correctness or validity of an amount debited to my/our account shall not be the concern of the Bank except in so far as the Direct Debit has not been paid in accordance with this authority. Any other disputes lie between me/us and the Initiator.
  - (d) Where the Bank has used reasonable care and skill in acting in accordance with this instruction, the Bank accepts no responsibility or liability (i) for the accuracy of information about payments on Bank Statements and (ii) any variations between notices given by the Initiator and the amounts of Direct Debits.
  - (e) The Bank is not responsible for, or under any liability in respect of the Initiator's failure to give written advance notice correctly nor for the non-receipt or late receipt of notice by me/us for any reason whatsoever. In any such situation the dispute lies between me/us and the Initiator.
- The Bank may:**
  - (a) In its absolute discretion conclusively determine the order of priority of payment by it of any monies pursuant to this or any other Authority, cheque or draft properly executed by me/us and given to or drawn on the Bank; (b) At any time terminate this authority as to future payments by notice in writing to me/us; (c) Charge its current fees for this service in force from time-to-time; and (d) Upon receipt of an "authority to transfer form" signed by me/us from a bank to which my/our account has been transferred, transfer to that bank this Authority to Accept Direct Debits.