

# FUEL TO GO LIMITED TRADE TERMS

Please read the following Trade Terms carefully. They apply to the Fuel Card provided by Fuel To Go Limited (**Company**) to the Customer, and to the Account and to any other transactions between the Company and the Customer, with effect from 1 February 2024.

## 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 the Company to the Customer to record the purchase of Products on credit, any other transactions between the Company and the Customer, and the incurring of fees and other charges by the Customer.
  - b. "Address for Service" means the postal address or email address last notified by the Customer and by the Guarantor; PO Box 1136, Nelson 7040 for the Company.
  - c. "Agreement" means these Trade Terms and the Application.
  - d. "Application" means the "Account Application Form" and/or "Fuel Card Application Form" and/or "Bulk Fuel Delivery Form" or other Company-approved form that a Customer must complete to make an application to the Company to open an Account and/or for the issue of a Fuel Card, including any electronic version of these forms submitted online.
  - e. "Authorised Person" means a person named on the Application, or otherwise advised in writing to the Company by the Customer, who is authorised on behalf of the Customer to apply for the issue of Fuel Cards.
  - f. "Bond" means an amount that the Company may from time to time require the Customer to pay to be held as a bond against the Customer's Account.
  - g. "Card Limit" means a limit on the value of the Products which may be purchased per transaction, per day and/or per month using a Fuel Card.
  - h. "Cardholder" means the person/legal entity named on and/or using a Fuel Card.
  - i. "Customer" means the person/legal entity described in the Application, and the persons/legal entities who apply for and open an Account.
  - j. "Default Event" means an event where:
    - i. the Customer fails, or in the Company's reasonable opinion is likely to fail, to comply with the Agreement, or any other contract with the Company;
    - ii. the Customer commits an act of bankruptcy;
    - iii. the Customer enters into any composition or arrangement with creditors;
    - iv. if the Customer is a company:
    - v. does anything which would make it liable to be put into liquidation;
    - vi. fails to provide a certificate of solvency within 10 days of receiving a written demand from the Company;
    - vii. a receiver or statutory or official manager is appointed over all or any of its assets;
    - viii. a resolution is passed or an application is made for liquidation;
    - ix. 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.
  - k. "Default Interest Rate" means the then current Official Cash Rate plus 10%.
  - l. "Due Date" means the date notified by the Company 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 any purchase of Product.
  - m. "Fuel Card" means any card issued in accordance with an Application.
  - n. "Guarantor" means the guarantor(s) signing any Deed of Guarantee and Indemnity required by the Company.
  - o. "Online Services" has the meaning set out in clause 15.1.
  - p. "Outlet" means those service stations, merchants, dealerships, depots and fuel dispensing facilities throughout New Zealand where Fuel Cards are approved for use by the Company.
  - q. "PIN" means the Personal Identification Number for use with a Fuel Card.
  - r. "PPSA" means Personal Property Securities Act 1999.
  - s. "Product" means those goods and services:
    - (ii) authorised by the Company for purchase using a Fuel Card from an Outlet or direct from the Company; and
    - (iii) goods and/or services arranged through the Supplier at the request of the Customer including but not limited to arranging the supply of bulk fuel.
  - t. "Product Restriction" means a restriction on the type of Products which may be purchased using a Fuel Card.
  - u. "Recommendation" means the best option for a given situation based on sources believed to be accurate.
  - v. "Sum Owing" means the amount due by the Customer to the Company as set out in clause 2.
  - w. "Supplier" means a supplier that the Company has a business relationship with and includes but is not limited to bulk fuel suppliers.
  - x. "Trade Terms" means these trade terms and the trade terms as amended from time to time by the Company.
- 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 Company will send an invoice or statement in respect of the Account to the Customer twice per month, or as otherwise agreed.
- 2.2 The invoice or statement will show the Sum Owing to the Company at the time of issue, how that Sum Owing is calculated including without limitation GST, levies or any other taxes that may be payable in respect of the Product, any further fees as provided for in Clause 10 and the Due Date for payment of the Sum Owing to the Company.
- 2.3 The Customer shall pay the Sum Owing to the Company:
  - 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 the Company.

## 3. PAYMENT

- 3.1 The Customer shall pay the Sum Owing to the Company by the Due Date.
- 3.2 The Company may apply any payment received from or on behalf of the Customer, and any credits due to the Customer, in reduction of the Sum Owing as the Company thinks fit.
- 3.3 The Customer acknowledges:
  - a. the Company continues to allow use of the Fuel Card on condition that all payments received by the Company from the Customer are valid and made in the ordinary course of the Customer's business;
  - b. the Company continues to arrange the supply of Product on the condition that all payments are received by the Company;
  - c. the Company 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;

- d. the understanding of the Company towards its business with the Customer shall apply until the Customer gives notice in writing to the Company of the Customer's inability to pay due debts and that the Customer's purpose in making further payment is to enable the Company 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;
- e. the Company has, in accepting each Customer payment, altered its position in reliance on the validity of each payment:
  - i. by delaying revocation of the authority granted to the Customer in clause 6.5b;
  - ii. by the continued supply of Products after the receipt of each payment whether or not the Customer pays for the Products;
  - iii. if payment is received after the Due Date, by foregoing its right to commence recovery action against the Customer or Guarantor.

## 4. SUPPLY, CARD AND CREDIT LIMITS

- 4.1 The supply of Products shall be completed upon dispatch/supply from the Outlet to the Customer or Cardholder as the case may be.
- 4.2 The Company shall not:
  - a. to the extent permitted by law, be liable for failure to supply, refusal to supply, or defective supply of Products;
  - b. guarantee a continuing relationship between the Customer and any Outlet.
- 4.3 The Customer may request Card Limits and Product Restrictions for its Fuel Cards. The Customer may amend such limits or restrictions on request to the Company. The Company may also impose and vary Card Limits and Product Restrictions from time to time.
- 4.4 The Company may allocate a credit limit to the Customer, which will apply in respect of all amounts the Customer owes the Company from time to time. The Customer's credit limit must not be exceeded. The Company may alter the credit limit from time to time in its discretion. If the Customer's credit limit is exceeded, the Customer may be prevented from purchasing Product using a Fuel Card until payment is received or the Company agrees alternative arrangements with the Customer.
- 4.5 For the avoidance of doubt, the Customer is responsible for all use of a Fuel Card regardless of any Card Limits, credit limits or Product Restrictions.

## 5. SUPPLY OF AVIATION FUEL

- 5.1 For the purposes of this clause 5:
  - a. "Aviation Fuel" means Jet A1 and Avgas.
  - b. "Restricted Person" is any person, organisation or state to which the sale or supply of Aviation Fuel is prohibited by the laws of New Zealand or by any international law to which New Zealand is a signatory.
- 5.2 Only Fuel Cards that have been authorised by the Company for the supply of Aviation Fuel may be used by the Customer for the purchase of Aviation Fuel, and in the case of Aviation Fuel the specific provisions of this clause 5 apply in addition to the other provisions of the Trade Terms.
- 5.3 Where a Customer uses a Fuel Card for the purchase of Aviation Fuel:
  - a. it is the Customer's responsibility to ensure that the correct type of Aviation Fuel for the Customer's needs has been purchased and supplied to the Customer;
  - b. the Customer shall at all times comply with all requirements (including regulatory requirements) of the Outlet supplying the Aviation Fuel, including completion of any documents required such as release notes;
  - c. it is the Customer's responsibility to ensure that any documents completed in respect of the supply of Aviation Fuel (including release notes) are completed correctly;
  - d. the Customer acknowledges that the Outlet may refuse to supply Aviation Fuel where the Customer does not, at the request of the Outlet, produce a Fuel Card that is authorised for the supply of Aviation Fuel;
  - e. the Customer acknowledges that the Company may at any time suspend or terminate the Customer's Account where the Company has reason to believe that the Customer is or will be a Restricted Person, and/or intends to sell, transfer or supply Aviation Fuel to a Restricted Person;
  - f. the Customer indemnifies the Company in respect of all liabilities, costs and expenses (including without limitation full costs between solicitor and client), claims or demands incurred by the Company or any third party resulting from the misfueling of any aircraft, the incorrect use of aviation products, and/or the death, injury or disease of any person arising from such misfueling or incorrect use.

## 6. RISK AND SECURITY INTEREST

- 6.1 Risk of any loss, damage or deterioration to the Products passes to the Customer upon supply.
- 6.2 Ownership in the Products remains with the Company and does not pass to the Customer until the Customer pays the Sum Owing to the Company.
- 6.3 Until payment of the Sum Owing the Customer shall insure the Products for their full insurable value with the Company noted on the relevant insurance policy.
- 6.4 The Customer grants a security interest in the Products to the Company as security for payment for the Products. Further, the Customer grants to the Company a security interest in all of the Customer's present and after acquired property as security for any amount from time to time owing by the Customer to the Company, and for the performance by the Customer of all the Customer's other indebtedness and obligations to the Company, whether in respect of the Account or otherwise.
- 6.5 Until full payment of the amounts due in respect of the Products and satisfaction of all the Customer's indebtedness and obligations to the Company:
  - a. the Customer must store the Products separately, not mix them, and must identify them as belonging to the Company.
  - b. the Company authorises the Customer to use the Products in the ordinary course of the Customer's business.
  - c. the authority in 6.5 is revoked when:
    - i. a Default Event occurs; or
    - ii. the Company notifies the Customer in writing that the 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 the Company, then the Company 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 the Company immediately in writing of a Default Event or any action by third parties (including any of the Customer's creditors) affecting the Company security interest in the Products or the Supplier security interest in other property of the Customer.
  - f. the Company may, without notice, enter the premises where the Products are stored and remove them, without being responsible for any damage caused which could not reasonably be avoided and the Customer shall indemnify the Company against any claim or costs arising from such action.

- g. the Company may resell any of the Products and apply the proceeds of sale in reduction of the Sum Owing, and against any other amounts owing by the Customer to the Company.
- 6.6 The Customer agrees to promptly do anything that the Company reasonably requires to:
- a. ensure that the Company has a first ranking perfected security interest in all of the Products (and any sale proceeds); and
  - b. enable registration of financing statements or financing change statements under the PPSA.
- 6.7 The Company authorises the Customer to use the Products in the ordinary course of the Customer's business, but resale is not permitted. Where the Customer does resell or uses the Products before payment of the full amount due for the Products, the proceeds of such sale or use shall be held by the Customer (in whatever form) in trust for the Company to the extent that the Company has not been paid for the Products.

## 7. PPSA

- 7.1 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 purchased using a Fuel Card or other goods and services otherwise supplied by the Company to the Customer (if any) and all Products that will be purchased using a Fuel Card or other goods and services otherwise supplied in the future by the Company to the Customer;
  - c. other than allowed by the PPSA, shall not register a financing statement or a change demand in respect of the Products without the prior written consent of the Company;
  - d. agrees to contract out of the Customer's rights as detailed in sections 107(1) and 107(2) of the PPSA.
  - e. undertakes to indemnify and, upon demand, reimburse the Company for all costs, expenses and other charges incurred in relation to:
    - i. the registering of a financing statement or financing change statement on the Personal Property Securities Register;
    - ii. any disputes or negotiations with third parties claiming an interest in the Products; in connection with these Trade Terms.
- 7.2 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.
- 7.3 The Customer shall unconditionally ratify any actions taken by the Company under clauses 7.1 and 7.2.

## 8. CLAIMS AND LIABILITY LIMITATION

- 8.1 Except as provided in any express warranty given and to the extent permitted by law, the Company:
- a. in respect of the Products, 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 the Company;
  - b. excludes liability to the Customer, any Cardholder, or any other third party, whether in tort (including negligence), contract, or otherwise, for any indirect, special, or consequential loss or damage, and the Customer indemnifies the Company against any such claim;
  - c. states that if it is found liable for any loss or damage relating to this Agreement, its liability 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.
- 8.2 Without limiting any other provision in these Trade Terms, to the extent permitted by law the Company is not liable to the Customer or any Cardholder, whether directly or indirectly for:
- a. the actions of any Outlet;
  - b. any Products purchased on Fuel Card;
  - c. any fault with any automatic facility used in conjunction with the Fuel Card;
  - d. any fault with the Fuel Card (including the PIN) itself;
  - e. any fault with the electronic system which processes the Fuel Card transaction;
  - f. any unauthorised use, misuse or fraud with a Fuel Card and/or PIN where the Customer has not given written notification of cancellation to the Company AND, where applicable, returned the Fuel Card to the Company in accordance with clauses 9.4h and 9.5.
- 8.3 The Company may at its complete discretion, give credit for the Products not supplied or delivered or incorrectly recorded; or supplied and established to be defective, provided that:
- a. any claim in respect of such Products must be notified to the Company within 10 days following receipt of the invoice/statement showing the supply of the Products;
  - b. all claims must set out the nature of the claim in sufficient detail to enable the Company to investigate the claim; and
  - c. the Customer shall take all steps to ensure that the Company has every opportunity to investigate the claim.
- 8.4 Where the Customer acquires the Products for business purposes, the Customer agrees that the statutory guarantees and implied terms, covenants and conditions contained in the Consumer Guarantees Act 1993 and Part 3 of the Contract and Commercial Law Act 2007 (Sale of Goods) does not apply to the Products. (In the absence of express written acknowledgement by the Company to the contrary the application by the Customer for an
- 8.5 Account is determination that the Customer acquires Products for "business purposes".)
- 8.6 The Customer is not permitted to on-sell the Products. The Customer indemnifies the Company against any liability or costs incurred by the Company under the Consumer Guarantees Act 1993 and/or Part 3 of the Contract and Commercial Law Act 2017 (Sale of Goods), as a result of any breach by the Customer of this restriction or any other term of the Agreement.
- 8.7 To the extent permitted by law, the provisions of Subpart 3 of Part 2 of the Contract and Commercial Law Act 2017 (Contractual Remedies) shall apply to this contract as if section 59(1)(e) were omitted from that Subpart.
- 8.8 In addition to any other limitation or exclusion of the Company's liability in this Agreement, and for the avoidance of doubt, the Company is not liable, to the extent permitted by law, for any loss, claims or damage of any kind whatsoever suffered by the Customer or any Cardholder arising directly or indirectly from any fuel purchased by the Customer or any Cardholder using the Fuel Card, not meeting or complying with:
- a. any specifications required by law, including, but without limitation, the specifications set out in the Engine Fuel Specifications Regulations 2011 as amended or replaced from time to time; or
  - b. any warranty, representation, description or claims made by the Supplier or Outlet or both, that the fuel meets or complies with certain standards including, but without limitation, standards set by the Supplier, Outlet, legislation, regulatory body, local authority or otherwise.

## 9. THE FUEL CARD

- 9.1 The Company and/or the Supplier retain ownership of any Fuel Card issued to a Customer.
- 9.2 The Fuel Card is issued by the Company to a Customer for use at the Outlets, by their Cardholders. Any Cardholder using a Fuel Card acts as an agent of the Customer in all respects in use of the Fuel Card.
- 9.3 The Customer is responsible for:
- a. advising all Cardholders of their obligations as the Customer's agent under the Agreement;
  - b. ensuring that all Cardholders comply with the Agreement;
  - c. ensuring that only authorised Cardholders use the Fuel Card;
  - d. all use of a Fuel Card, whether authorised by the Customer or not;
  - e. notifying the Company of any changes in the persons who are Authorised Persons.
- 9.4 The Customer must ensure that the Cardholder:
- a. does not use the Customer Account number as a PIN;
  - b. keeps the PIN safe and secure at all times;
  - c. does not write the PIN down anywhere including on the Fuel Card itself;
  - d. does not use a PIN which could be easily guessed by any person;
  - e. does not allow anyone else to use the Fuel Card or PIN;
  - f. not attempt to obtain cash for refund of Products or be party to negotiation for direct "cash" discounts with a Supplier or an Outlet;
  - g. where a credit is due from a Supplier or an Outlet, ensure that the credit is passed in to the Company for the credit of the Customer;
  - h. notify the Customer and the Company immediately if the Fuel Card is lost, stolen, misused, or the PIN is disclosed. Liability of the Customer for Products purchased by the unauthorised use of the Fuel Card (except where it results from fraud or negligence), shall cease only upon written acknowledgement by the Company of this notification;
  - i. return or destroy the Fuel Card when required to do so, or the Account is closed;
  - j. is aware of, and complies with, the Card Limits and Product Restrictions; and
  - k. does not use the Fuel Card to buy gift cards, vouchers, tokens, or similar item that can be exchanged for goods or services.
- 9.5 The Customer:
- a. may cancel a Fuel Card where it is no longer required by returning it to the Company;
  - b. must return any cancelled Fuel Card (unless lost or stolen), cut in half, to the Company. The Customer will remain liable for all transactions recorded against a cancelled Fuel Card until such time as the cancelled Fuel Card is actually received by the Company (except where the Fuel Card is cancelled pursuant to clause 9.4h).
- 9.6 The Company shall not be responsible for:
- a. the issue of a Fuel Card to any person who is not authorised as a Cardholder by the Customer, where a request is made for a Fuel Card by an Authorised Person;
  - b. any dispute between the Customer and Cardholder;
  - c. any dispute between the Customer and/or Cardholder, and any Supplier or Outlet, except where the dispute arises due to the negligence of the Company or a defect in the Fuel Card or PIN;
  - d. the actions of any Supplier or Outlet;
  - e. any credit due by a Supplier or Outlet to a Customer until notification of such credit is received from the Supplier or Outlet;
  - f. any losses caused by occurrences beyond its control where a Fuel Card is unable to be used.
- 9.7 The Customer and the Cardholder acknowledge that where a Fuel Card is issued with a vehicle registration number and/or a Cardholder's name on the Fuel Card that this is for convenience purposes only and not for security protection. The Customer and the Cardholder agree that where the Fuel Card is presented at an Outlet, the Outlet is under no responsibility whatsoever to confirm that the name and/or vehicle registration on the Fuel Card matches the name of the person using the Fuel Card or that the registration of the Vehicle matches the vehicle being refuelled.
- 9.8 The Customer shall not join the Company as a party to any claim involving a Supplier or Outlet and expressly agrees that any breach of this term is a Default Event.

## 10. FEES

- 10.1 The following fees may be added to the Account by the Company, and will therefore form part of the Sum Owing:
- a. the current monthly card fee per Fuel Card;
  - b. a replacement card fee for any replacement Fuel Cards;
  - c. the current transaction fee for each transaction on a Fuel Card;
  - d. a courier fee for each order of Fuel Cards;
  - e. a dishonour fee if any payment by the Customer is dishonoured or delayed;
  - f. a processing fee for payments made by credit cards;
  - g. any other fees charged by the Company, including fees charged for fuel management reports or the Online Services.
- 10.2 The Company reserves the right to vary these fees from time to time. The Company will make reasonable efforts to make the Customer aware of the change in fees before they are incurred by the Customer, whether by the Company giving notice to the Customer of the fee change or by updating the fees shown on the Company's website, Mobile App, invoice or other areas where fees are displayed.

## 11. DEFAULT AND CONSEQUENCES OF NON PAYMENT

- 11.1 Should a Default Event occur the Company may suspend or cancel any Fuel Card and the Account, and the Sum Owing shall immediately become due and payable notwithstanding that the Due Date has not arrived.
- 11.2 If the Customer does not pay the Sum Owing by the Due Date, or in accordance with clause 11.1:
- a. the Company may charge interest at the Default Interest Rate (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 Due Date until payment in full and is charged for failure to pay and does not imply the granting of, or extension of, credit by the Company to the Customer. Failure to charge interest in accordance with this clause in any month does not preclude the Company from charging interest in accordance with this clause in any other month.
  - b. the Company may charge a dishonour fee to cover administration costs, which shall become immediately due and payable.
  - c. the Company may reverse any discounts recorded on the Account.
  - d. the Company may debit any other account the Customer may have to pay the Sum Owing.
  - e. the Company may apply any Bond held against the Sum Owing, at such time and on such terms and conditions as the Company may determine, with any balance of the Bond not used to pay the Sum Owing to be refunded to the Customer on the Company closing the Account.
  - f. the Customer shall be liable to pay for, and shall indemnify the Company against all reasonable Account transaction fees, administration collection costs, legal costs of the Company as between solicitor and client, and any collection commissions, incurred as a consequence of a Default Event.

11.3 The Company shall have the right (at its discretion) to complete and register an all obligations mortgage (Registrar General of Land approval 2018/4344) or caveat over any property owned by the Customer to secure the Sum Owing and the Customer irrevocably appoints a director of the Company as the attorney of the Customer for the purpose of completing such mortgage or caveat whilst the Sum Owing remains unpaid.

11.4 The Company may commence an action for any amount owing by the Customer where that amount is not paid by the Due Date or in accordance with clause 11.1.

## 12. THE PRIVACY ACT 2020 INFORMATION USE

12.1 In addition to the Company's current Privacy Policy, the Customer and Guarantor agree that:

a. the personal information provided, obtained and retained by the Company about them (including personal information about Customer's and/or Guarantor's directors, officers or trustees) will be held and used for any or all of the following purposes including:

- determining eligibility for credit, including requesting information from credit reference and reporting agencies,
- decisions regarding the supply of Products,
- enforcing debt and legal obligations under the Agreement,
- the marketing of goods and services including emails and market research by the Company and any Supplier of the Company,
- the Supplier providing the information to other providers of credit and credit reference and reporting agencies and debt collection agencies, in response to genuine credit related enquiries by such other providers and agencies.

b. the Customer and the Guarantor give irrevocable authority to the Company to:

- use any personal information for the purposes in clause 12.1a;
- obtain any information concerning the Customer and/or the Guarantor (including personal information about Customer's and Guarantor's directors, officers or trustees) from any other source for the purposes of the Company's business with the Customer.

12.2 The Customer and Guarantor must notify the Company of any change in circumstances that may affect the accuracy of the information provided by them to the Company.

12.3 The Customer acknowledges, and will advise the Cardholder that, the Company may record the Cardholder's name in conjunction with the Fuel Card issued to that Cardholder.

12.4 The Customer, Cardholder, Guarantor as a natural person and the Customer's and Guarantor's directors, officers or trustees, have rights of access to, and correction of any personal information held by the Company.

12.5 Where the Customer and/or Guarantors are an individual the authorities under clause 12.1a are authorities or consents for the purposes of the Privacy Act 2020.

12.6 The Customer and Guarantors, and the Customer's and Guarantor's directors, officers or trustees, and the Cardholders shall have the right to request from the Company, a copy of the information about themselves retained by the Company and the right to request the Company to correct any incorrect information about themselves held by the Company.

12.7 The Customer acknowledges that the Company may gather and share non-personal information, such as aggregated information, with third parties for a variety of purposes in the sole discretion of the Company. However the Company may only do so in such a way that no individual Customer is specifically identified or linked to any specific action or information.

## 13. APPLICATION

13.1 It is the Customer's responsibility to ensure that all information provided in the Application, and in any other manner, to the Company is true and correct. The Customer must not withhold any information that the Customer reasonably should consider the Company should be aware of in considering the Application.

13.2 If any of the information provided in the Application is incorrect, or if any information has been withheld as referred to in clause 13.1, the Company may close the Account.

13.3 The Customer acknowledges that the Company's acceptance of an Application is subject at all times to the Company's sole discretion.

## 14. ASSIGNMENT/CANCELLATION

14.1 The Company 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 the Company.

14.2 The Company may assign the Agreement to any third party.

14.3 The Company shall be entitled to cancel all or any part of the Agreement at any time with prior notice to the Customer. Any such cancellation shall be without prejudice to the Company's rights and remedies including, but not limited to, those which may arise from any breach or non-compliance by the Customer.

## 15. APP

15.1 The Company may, at its discretion, provide to the Customer (directly or via a mobile device application marketplace, such as Apple App Store or Google Play Store) a software application for use on specified mobile devices or website (**App**) which may give the Authorised Person limited administration rights in relation to the Account and the Fuel Cards, which may include without limitation setting Card Limits, Product Restrictions, suspend, cancel and change PIN's for Fuel Cards, and to obtain other information (**Online Services**). The App and the Online Services are made available subject to the applicable terms of use, as linked on or in the App or marketplace or as published on the Company's website (**App Terms of Use**), and may be updated by the Company from time to time. In the event there is any conflict between the Agreement and the App Terms of Use, the terms and conditions of the Agreement shall prevail.

## 16. OTHER SUPPLY TERMS

16.1 If there is any inconsistency between the Agreement and any order submitted by the Customer, or any other arrangement between the parties, the Agreement shall prevail unless otherwise agreed in writing by the parties.

16.2 The Customer and Cardholder shall not approach any Supplier or Outlet for direct discounts, use the name of Company, or reveal Supplier trading terms in any attempt to obtain personal discounts from businesses not associated with the Company. A breach of this term shall be a Default Event.

## 17. WAIVER

17.1 If at any time the Company does not enforce the Trade Terms, or grants the Customer time or other indulgence, the Company shall not be construed as having waived the Trade Terms or its right to later enforce the Trade Terms.

## 18. TERMS SEPARATELY BINDING

18.1 Each clause of the Trade Terms is separately binding. If any provision of the Trade Terms is found to be illegal, invalid or unenforceable, that provision shall be read down to the extent necessary and reasonable in all circumstances to give it a valid operation or partial character. If any provision cannot be so read down, that provision will be void and severable and the remaining provisions will not in any way be affected or impaired.

## 19. CHANGING THE TRADE TERMS

19.1 The Company may make minor changes to the Agreement which do not materially impact the operation of, or an essential term of, the Agreement without notice to the Customer. For

all other modifications to or variations of this Agreement, the Company must provide the Customer at least 20 Working Days' written notice of the changes. If the Customer does not accept any changes to the Agreement notified by the Company, it may terminate this Agreement prior to the changes taking effect by giving written notice to the Company and returning all Fuel Cards in accordance with clause 9.5. For the avoidance of doubt, the Customer will remain liable for the Sum Owing, all Fuel Card use, all Products supplied, and all invoices debited to the Account until the Customer has paid all amounts owing to the Company.

## 20. ACCEPTANCE OF TRADE TERMS

20.1 By signing the Application/Guarantee, and/or by using the Account, the Customer/Guarantor acknowledges that the Trade Terms apply to the Account.

20.2 The Customer acknowledges receiving a copy of the Trade Terms prior to signing the Application. A further copy can be obtained from the Company at the Address for Service or by downloading from the website <https://fuelogo.co.nz/>.

## 21. CORRESPONDENCE

21.1 The Company will send or deliver all correspondence to the Customer, including invoices and statements, to the Address for Service as provided by the Customer. Delivery is deemed to occur as follows:

- for correspondence sent by post, 4 days after it has been sent;
- upon confirmation of transmission;
- for a document has been served and received, on the date of delivery;
- for an email, 1 day after it has been sent.

21.2 The Customer:

- must inform the Company by giving not less than 14 days prior notice in writing (addressed to Customer Services):
  - of any proposed change in the Customer name;
  - if the Address for Service or contact phone number is changed.

## 22. CLOSING ACCOUNT

22.1 The Customer must inform the Company by giving not less than 14 days prior notice in writing (addressed to Customer Services) where the Account is to be closed.

22.2 The Customer remains liable for the Sum Owing, all Fuel Card use, all Products supplied, and all invoices debited to the Account until the Company has acknowledged in writing receipt of the Customer instructions to close the Account and the Customer has paid all amounts owing to the Company.

## 23. USE OF PRODUCTS

23.1 From time to time, the Company or a Supplier may provide advice, information or Recommendation to the Customer /Cardholder relating to the Products. Such advice, information or Recommendation is given in good faith and based on the information provided by the Customer/Cardholder. The Customer acknowledges that the decision to order and use the Products, or follow the Recommendation is that of the Customer/Cardholder and is made of the Customer's/Cardholder's own volition.

## 24. RETURNS

24.1 Where the Company at its discretion allows the Customer to return the Products (not defective or non complying) the Company reserves the right to charge, in addition to any delivery costs, a return fee.

24.2 The return fee may be added to the Account by the Company and will therefore form part of the Sum Owing.

## 25. CIRCUMSTANCES BEYOND CONTROL

25.1 The Company shall not be liable for any delay or failure to supply the Products, or to meet any other obligations owed to the Customer, where such delay, failure or omission is due to circumstances beyond the reasonable control of the Company.

## 26. LEGAL FORUM

26.1 The Customer acknowledges that any dispute or legal proceedings between the Customer and the Company 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 Agreement 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.

26.2 The Agreement is subject to and governed by New Zealand law. The language of the Trade Terms shall only be 'English'.