

## L.H PERRY & SONS PTY LTD FUEL CARD, CREDIT ACCOUNT & BULK FACILITY TERMS AND CONDITIONS

These Terms and Conditions apply to the Credit Account and Bulk Facility.

### 1. Definitions

**Account** means the account opened by LHP for the Accountholder to obtain a Credit Account and/or Bulk facility

**Accountholder** means the Applicant in the Application;

**Application** means a credit application completed by the Accountholder and submitted to LHP for the supply of Products and Services on credit;

**Bulk Facility** means the facility to purchase Bulk Products on credit;

**Bulk Products** means Petroleum Products and Lubricants which the Accountholder purchases in bulk from LHP;

**Cardholder** means a person who uses a Fuel Card with the authority of the Accountholder;

**Credit Account** means the facility to purchase Products on credit from LHP using a Fuel Card;

**Credit Limit** means the amount set out in the Application or such other amount as notified to the Accountholder by LHP from time to time as the maximum amount permitted for purchases of Products by the Accountholder on its Account;

**Due Date** means the date that is 15 days after the date the Tax Invoice for the Account is issued, unless otherwise agreed in writing between the Accountholder and LHP, by or on which the amount payable pursuant to the Tax Invoice must be paid in full;

**Fuel Card** means a Fuel Card issued by LHP to the Accountholder under the Credit Account;

**Lubricants** means all lubricating oils, greases, brake fluids, coolants, fuel performance additives and degreasers manufactured or marketed (or both) by or on behalf of LHP or otherwise sold by a Merchant;

**Merchant** means an authorised supplier of some or all of the Products who may accept Fuel Cards;

**LHP** means L.H Perry & Sons Pty Ltd ACN 622 813 923;

**Order** means any order placed by the Accountholder for the delivery of Bulk Products by LHP;

**Petroleum Products** means petrol, diesel, liquefied petroleum gas and any other products which may be used in propelling motors and which are manufactured or marketed (or both) by or on behalf of LHP or is otherwise sold by a Merchant;

**PPSA** means the *Personal Property Securities Act 2009 (Cth)*;

**Privacy Agreement** means the privacy agreement contained in the Application;

**Processed Goods** means Bulk Products which after their delivery become part of a Product or mass by being manufactured, processed, assembled, commingled or otherwise dealt with in such a way that their identity is lost in the product or mass;

**Products** means Petroleum Products, Lubricants and convenience store goods;

**Terms and Conditions** means these terms and conditions and includes the Application and the Privacy Agreement;

**Transaction** means a purchase transaction for which a Fuel Card is used by a Cardholder to purchase Products;

The terms "financing statement", "proceeds", "purchase money security interest", "security agreement", "security interest" and "verification statement" have the respective meanings given to them under, or in the context of, the PPSA.

### 2. Application of these Terms and Conditions

2.1. LHP may accept or decline an Application at its absolute discretion by a written notice to the Accountholder after the receipt of the correctly completed Application and all supporting information that may be requested. LHP may accept the Application but vary the Credit Limit requested by the Accountholder in its sole discretion.

2.2. If LHP accepts an Application, LHP agrees to provide the Accountholder with the Credit Account and/or Bulk Facility on these Terms and Conditions and, in consideration of LHP providing the Accountholder with the Credit Account and/or Bulk Facility, the Accountholder agrees to be bound by these Terms and Conditions.

2.3. The application of these Terms and Conditions will commence when LHP accepts the Accountholder's Application and continue until terminated in accordance with clause 8.

2.4. In these Terms and Conditions, unless the context requires otherwise, the singular includes the plural and vice versa, reference to a gender includes all genders, reference to "person" includes a natural person, company, body corporate or other form of legal entity, and reference to "including" and "includes" is to be read as if followed by "without limitation".

### 3. Credit Limit

3.1. The Accountholder must not exceed its Credit Limit. LHP may refuse to supply Products or Bulk Products to the Accountholder/Cardholder in excess of the Accountholder's Credit Limit.

3.2. If a Transaction or a delivery of any Bulk Products at any time results in the Accountholder exceeding its Credit Limit ("Shortfall"), the Accountholder/Cardholder must:

- (a) pay LHP or the Merchant the amount of the Shortfall immediately in full; and
- (b) if the Accountholder/Cardholder is not able to pay in accordance with sub-clause (a), the Accountholder/Cardholder must immediately return any Products or Bulk Products which are capable of being returned in their original condition to LHP or the Merchant.

### 4. Receipts

The Merchant will issue the Accountholder with a sales voucher or a delivery docket at the time of the Transaction or delivery. The Accountholder agrees that it is the Accountholder's/Cardholder's responsibility to ensure any sales voucher or delivery docket correctly records the type of the Product or Bulk Product, quantity, price and other details of the purchase.

### 5. Payment

5.1. LHP will issue a fortnightly tax invoice to the Accountholder by email for all purchases made during the previous billing period and all fees, charges and moneys otherwise due and payable to LHP. The Accountholder must pay the full amount of the tax invoice by the Due Date without deduction or set-off.

5.2. Payment will be effected by:

(a) direct debit from the Accountholder's nominated bank account in accordance with the Direct Debit Service Agreement; or

(b) if arranged prior with LHP by bank transfer to Bank SA using BSB 105046 Account 027296940 (please put your account number then trading name in the reference field).

5.3. If the Due Date falls on a non-business day, the payment must be made on the first business day after the Due Date if the payment is effected by direct debit and on the business day preceding the Due Date if the payment is effected by any other payment method.

### 6. Default

6.1. Payment is made on the date when LHP receives cleared funds into its nominated bank account. The Accountholder is in default if full payment of the tax invoice is not made by or on the Due Date or if the payment subsequently dishonours.

6.2. If the Accountholder is in default, in addition to any other right LHP may have, LHP may immediately and without prior notice, at its discretion do any one or more of the following:

(a) charge the Accountholder interest on the overdue amount at a rate of 20% per annum from the Due Date until LHP receives the payment in full as well as a monthly default administration fee;

(b) suspend the provision of either or both of the Credit Account and/or Bulk Facility to the Accountholder until the payment is made in full;

(c) review and adjust the Accountholder's Credit Limit; and

(d) terminate the provision of either or both of the Credit Account and/or Bulk Facility.

6.3. If the Accountholder is in default, the Accountholder will be liable to LHP for the following:

(a) the unpaid amount;

(b) any new amount in respect of any purchases and/or fees incurred on the Account after the date of the latest tax invoice issued to the Accountholder;

(c) any interest on the unpaid amount and any new amount charged to the Accountholder under clause 6.2(a); and

(d) all costs and expenses, including full legal and administrative costs incurred by LHP in attempting to enforce payment or otherwise incurred as a result of the default (including but not limited to payment dishonour fees, debt collection, court fees and charges, legal fees).

All such amounts are debts incurred by the Accountholder to LHP and must be paid within 3 business days after the receipt of a tax invoice from LHP. However, the Accountholder agrees that if a tax invoice has previously been issued for any amount (such as an invoice for the unpaid amount), such invoice does not need to be reissued under this clause and that amount becomes immediately due and payable on the date of default.

## 7. Risk

Risk in the Products and Bulk Products will pass to the Accountholder when the Products or Bulk Products have passed into the Accountholder's vehicle, tank or other storage equipment or when the Products or Bulk Products have been otherwise delivered and unloaded at the Accountholder's premises or when convenience store goods have been taken out of the store.

## 8. Termination

8.1. LHP may terminate these Terms and Conditions immediately by notice in writing to the Accountholder if:

(a) the Accountholder breaches any obligation under these Terms and Conditions and fails to remedy the breach within 14 days after notice from LHP to remedy the breach;

(b) the Accountholder breaches any obligation under these Terms and Conditions and the breach cannot be remedied; or

(c) the Accountholder goes into liquidation, receivership, administration, bankruptcy, enters an arrangement or compromise with its creditors, has any form of insolvency administrator appointed to it or to any of its property or cannot pay its debts when they are due or where the Accountholder is a partnership, one or more partners become a bankrupt or the partnership is dissolved.

8.2. Either party may terminate these Terms and Conditions at any time by giving the other party 30 days written notice.

8.3. On termination of these Terms and Conditions:

(a) all moneys owing to LHP by the Accountholder immediately become due and payable without prejudice to any other right of LHP;

(b) LHP may take such action as it is entitled to take by law, and, for the purposes of the recovery of the Products or Bulk Products, enter any site where they are stored or where they are reasonably sought to be stored and take possession of them; and

(c) any right accrued prior to the termination remains unaffected.

## 9. Limitation of Liability & Indemnity

9.1. To the extent permitted by law, all express or implied warranties, guarantees, conditions or representations relating to the Products or Bulk Products that are not contained in these Terms and Conditions are excluded. If any non-excludable condition, guarantee or warranty is implied into these Terms and Conditions and such condition, guarantee or warranty is breached, the liability of LHP in respect of such breach will be limited in relation to goods supplied under these Terms and Conditions to:

(a) the replacement of the goods or the supply of equivalent goods;

(b) the repair of the goods;

(c) the payment of the cost of replacing the goods or of acquiring equivalent goods; or

(d) the payment of the cost of having the goods repaired,

and in relation to services supplied under these Terms and Conditions the supplying of the services again or the payment of the cost of having the services supplied again.

9.2. Subject to clause 9.1, LHP will not be liable to the Accountholder, whether directly or indirectly for:

(a) any act or omission of the Merchants, or the provision of, or the quality or standard of the Services provided by any Merchant;

(b) any fault with any automatic or electronic facility used in connection with or to process the Credit Account or any fault with any Fuel Card (including PIN);

(c) any fault with the Accountholder's tanks, storage equipment, loading and unloading facilities, site or other delivery locations;

(d) any third party claim arising out of supply of Products or Bulk Products or the performance or non-performance of any obligations under these Terms and Conditions; or

(e) any claim arising from an Accountholder's inability to use the Fuel Card to purchase some or all of the Products or Services from Merchants.

9.3. LHP will not be liable to the Accountholder for any indirect or consequential loss, economic loss and/or loss of profit, income, business, production, reputation or goodwill. Any LHP liability which may arise under these Terms and Conditions is limited to the maximum extent permitted by law.

9.4. The Accountholder must indemnify and hold LHP harmless against any claim, liability, cost or expense arising directly or indirectly out of:

(a) a breach by the Accountholder or a Cardholder of any provision of these Terms and Conditions;

(b) storage, handling and dispensing of any Products or Bulk Products at the Accountholder's site or other premises; and

(c) misuse, whether innocent or wilful, by the Accountholder or a Cardholder of any Fuel Card or the Credit Account or Bulk Facility.

## 10. Taxes

(a) Unless stated otherwise, if a Taxable Supply is made under these Terms and Conditions the party which made the supply (the "**Supplying Party**") may in addition to the amount payable under these Terms and Conditions recover from the other party (the "**Receiving Party**") an additional amount on account of GST, calculated by multiplying the amount payable by the GST Rate.

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

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

(d) LHP has the right to charge the Accountholder with government rates, taxes or charges which now are or which in the future may be imposed or charged in relation to the Credit Account, Bulk Facility, sale of Products or Transactions, whether or not the Accountholder is primarily liable for the impost or charge.

## 11. Notices

11.1. All notices must be in writing and must be delivered or mailed:

(a) to LHP – to Credit Manager, L.H. Perry & Sons Pty Ltd, PO Box 23, Crystal Brook, SA 5523; and

(b) to the Accountholder, using the Accountholder's contact details as nominated in the Application (including email) or as otherwise advised by the Accountholder in writing.

11.2. The notice will be deemed served when, if delivered, on delivery; if sent by mail, two business days after the date on which the notice was posted; and if sent by email immediately.

## 12. Force Majeure

12.1. LHP will not be liable for a failure or delay in delivering Products or Bulk Products or in complying with these Terms and Conditions, if that failure or delay is due to a strike or other industrial action, compliance with a government request, any actions taken by LHP or its employees, agents or contractors in response to public health concerns (including health epidemics or pandemics), a shortage of supply, or any event beyond its reasonable control or the inability or refusal of a Merchant to supply Products to the Accountholder for any reason.

12.2. If for any such cause LHP is unable to supply any of the Product or Bulk Products its obligations under these Terms and Conditions shall be deemed suspended for the period of inability. In the event of a shortage of such Products or Bulk Products LHP may, without being deemed to be in breach of these Terms and Conditions, ration or apportion its available supplies among such of its Accountholders as it may, in its absolute direction, deem desirable during the period or periods of shortage.

## 13. Miscellaneous

13.1. The Accountholder must notify LHP in writing of any change in the Accountholder's contact details or other details within 2 business days of any such change.

13.2. LHP has the right to vary, delete or supplement these Terms and Conditions (or any other term contained in written correspondence from LHP) by written notice. Any change takes effect from the earlier of the first Order or the first use of a Fuel Card after notice is deemed to be received and 14 days after notice is deemed to be received.

13.3. These Terms and Conditions constitute the entire agreement between the parties concerning the subject matter of the agreement and any previous agreement, understanding and negotiations on the subject matter are excluded.

13.4. LHP may assign and/or subcontract its rights and obligations under these Terms and Conditions without notice at any time. The Accountholder may not assign or otherwise dispose of its rights and obligations under these Terms and Conditions without prior written consent from LHP.

13.5. Any waiver by LHP of any rights under these Terms and Conditions will not constitute a general waiver of those or other rights.

13.6. If any term of these Terms and Conditions or any part thereof is or becomes or is declared illegal, invalid or unenforceable for any reason whatsoever in any jurisdiction and such term or part is severable, it is deemed deleted from these Terms and Conditions in the relevant jurisdiction.

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

13.8. The Terms and Conditions shall be governed by and interpreted in accordance with the laws in force in the State of South Australia. The parties submit to the exclusive jurisdiction of the Courts of the State of South Australia.

## **CREDIT ACCOUNT**

These Terms and Conditions apply to the Credit Account in addition to clauses 1 to 13.

### **14. Purchases**

14.1. LHP agrees to provide the Accountholder with the Credit Account for the purposes of purchasing some or all of Products from Merchants.

14.2. The Accountholder must pay the prices charged by the Merchant for Products at the time of the Transaction, unless different prices are agreed in advance between the Accountholder and LHP in writing.

14.3. In addition to the price for Products, the Accountholder must pay the amounts referred to in clause 10.

14.4. LHP will charge all amounts due for the purchases of Products to the Accountholder's Credit Account.

### **15. Use of Fuel Cards**

15.1. The Accountholder agrees that the Credit Account must be used by the Accountholder wholly or predominantly for business purposes and not wholly or predominantly for personal or domestic purposes.

15.2. LHP may issue any Fuel Cards to the Accountholder for the persons or vehicles nominated in the Application. The Accountholder, as the Credit Accountholder, is fully responsible for the use of the Fuel Cards by any of the Cardholders, including the use of PINs. Except as otherwise expressly stated in these Terms and Conditions, the Accountholder will be liable to LHP for all Transactions processed on the Accountholder's Fuel Card(s), including, without limitation, where a transaction is processed in circumstances where the Accountholder is not the person presenting the Fuel Card. The Accountholder shall ensure that all Cardholders comply with these Terms and Conditions.

15.3. The Cardholder must provide the Fuel Card to the Merchant at the time of the Transaction. The Accountholder may only use the Fuel Cards which are valid and, subject to earlier suspension and termination, only until the expiry date shown on the Fuel Card. The Accountholder shall be fully responsible for any purchases, fees and charges incurred on expired, suspended or otherwise invalid Fuel Cards.

15.4. All Fuel Cards remain the property of LHP at all times. LHP may, at any time, cancel or require the Accountholder to return or destroy any Fuel Card. Where the Accountholder is not otherwise in breach of these Terms and Conditions, LHP will reissue a replacement Fuel Card to the Accountholder as soon as practicable.

15.5. The Fuel Cards may not be used to obtain cash, cash equivalent of a Product or cash for the refund of a Product or Service.

15.6 Upon request LHP may issue fuel cards to the Customer that allow purchases to be made directly from major petroleum suppliers (including at LHP sites) in Australia and the Customer shall pay all applicable transaction and card fees in respect of such cards.

### **16. PINs and Identity Verification**

16.1. Where a Fuel Card is PIN activated, the Accountholder/Cardholder must use the PIN for all electronic Transactions. LHP will not accept/process any electronic Transaction where a Fuel Card is PIN activated and the Cardholder fails to enter the correct PIN at the time of the Transaction.

16.2. Where a Fuel Card has been issued without a PIN or where the Merchant processes the Fuel Card manually, the Cardholder may be required to provide the Merchant with a suitable form of identification at the time of the Transaction. LHP may refuse to supply any Products or Services to the Accountholder/Cardholder where the Cardholder is not able to provide acceptable identification to the Merchant at the time of the Transaction.

16.3. If use of the Fuel Card is refused under clause 16.1 or 16.2, the Accountholder/Cardholder must pay to LHP or the Merchant as the case may be the amount payable in respect of the Products and/or Services, which have been supplied or performed, immediately in full. If the Accountholder/Cardholder is unable to pay in full for the Products supplied, the Cardholder must immediately return any Products which are capable of being returned in their original condition to the Merchant.

## **17. Lost, Stolen Fuel Cards and Cancellation of Authority to Use**

17.1. If any Fuel Card is lost, stolen, misused, no longer required by the Accountholder, or the Accountholder wishes to withdraw the authority of the Cardholder to use the Fuel Card, the Accountholder must notify LHP immediately in writing .

17.2. Without limiting any other clause of these Terms and Conditions, the Accountholder is fully liable for any purchases, losses, costs, expenses or claims arising out of any use of a Fuel Card, whether authorised or unauthorised, until LHP receives a notice from the Accountholder strictly in accordance with clause 17.1.

## **BULK FACILITY**

These Terms and Conditions apply to the Bulk Facility in addition to clauses 1 to 13.

### **18. Purchases**

LHP agrees to provide the Accountholder with the Bulk Facility for the purposes of purchasing some or all of Bulk Products from LHP on credit. The Accountholder agrees that the Bulk Facility must be used by the Accountholder wholly or predominantly for business purposes.

### **19. Prices**

19.1. The Accountholder must pay the prices which are charged by LHP for Bulk Products:

- (a) which are delivered to the Accountholder, at the time of the delivery; or
- (b) which are picked up by the Accountholder from LHP's premises, at the time of the pick-up,

unless different prices have been agreed in advance between the Accountholder and LHP in writing.

19.2. In addition to the prices for Bulk Products, the Accountholder must pay amounts referred to in clause 10.

19.3. LHP will charge all amounts due for the purchases of Bulk Products to the Accountholder's Bulk Account.

### **20. Delivery**

20.1. Deliveries shall be made under the control and direction of LHP and in such a manner and at such times as may be arranged by LHP.

21. Written notice of any claim for any defect in quality or shortage in quantity in relation to any of the Bulk Products must be given by the Accountholder to LHP within 24 hours after receipt of the Bulk Product for which the claim is made. The notice must state the nature of the defect or deficiency and indicate where and when LHP may inspect the Bulk Product. Any inspection by LHP for the purposes of this clause shall not of itself be construed as an acceptance by LHP of the Accountholder's claim.

#### **21.1. The Accountholder:**

(a) must make available safe and unrestricted access for delivery at the Accountholder's site and must comply with all laws in relation to the handling, storage and transport of Bulk Products;

(b) is fully responsible for the condition, reliability and safety (including environmental safety) of its tanks and other Bulk Products storage equipment;

(c) must ensure that its tanks and other Bulk Products storage equipment comply with all relevant laws and that adequate environmental protection systems are in place to prevent migration of any Bulk Products (including bunding, oily water separation systems, fire extinguishers and spill kits); and

(d) must immediately notify LHP in writing of any faulty tanks or other Bulk Products storage equipment, in which case LHP will not be obliged to deliver Bulk Products to the Accountholder until such fault is rectified; and

(e) provide LHP with unrestricted access to the Accountholder's site from time to time to conduct an audit of the Accountholder's compliance with this clause and LHP is not obliged to deliver Bulk Products to the Accountholder until any identified faults are rectified.

21.2. LHP will not be responsible for any leakage from any of the Accountholder's tanks or other storage equipment, nor any associated environmental damage, except to the extent of LHP's negligent act or omission, and the Accountholder agrees to indemnify LHP against all actions, claims, costs, expenses and other liability in relation to such leakage or environmental damage.

## **22. Retention of Title**

22.1. Property and ownership in the Bulk Products will remain with LHP until the Accountholder has made payment in full in cleared funds of the purchase price of those Bulk Products and all other amounts owing to LHP under these Terms and Conditions.

22.2. Until all moneys payable by the Accountholder have been paid in full in accordance with clause 22.1:

(a) The Accountholder shall hold the Bulk Products as bailee for LHP.

(b) The Accountholder must not allow any person to have or acquire any security interest in the Bulk Products.

(c) After giving 48 hours notice to the Accountholder, LHP shall be entitled to enter the Accountholder's premises during the Accountholder's normal trading hours to inspect the Bulk Products.

(d) Where possible, the Bulk Products shall be stored separately and in a manner to enable them to be identified and cross-referenced to particular invoices.

## **23. Personal Property Security, Charge and Mortgage**

23.1. The Accountholder grants to LHP a security interest in the Bulk Products to secure payment of all amounts payable by the Accountholder to LHP under these Terms and Conditions. The security interest:

(a) extends to and continues in all proceeds and Processed Goods; and

(b) is a purchase money security interest to the extent to which it secures payment of that part of the amount payable under these Terms and Conditions which comprises the aggregate unpaid purchase price of the Bulk Products.

23.2. The Accountholder must not do or permit anything to be done that may result in the purchase money security interest granted to LHP ranking in priority behind any other security interest.

23.3. The Accountholder charges in favour of LHP all of its interest in all present and future real property of the Accountholder to secure the performance of the Accountholder's obligations under these Terms and Conditions, including payment of all amounts owing by the Accountholder to LHP. The Accountholder acknowledges that LHP has a caveatable interest in any real property of the Accountholder under this clause and may lodge a caveat over that property. Upon demand by LHP, the Accountholder agrees to immediately execute a mortgage on terms satisfactory to LHP to more particularly describe the security interest conferred by this clause. Should the Accountholder fail within a reasonable time of such demand to execute that mortgage, then the Accountholder irrevocably appoints LHP as its attorney with authority to do on its behalf anything that it may lawfully authorise an attorney to do including, without limitation, to make, sign, execute, seal and deliver any document and to take possession of, use, sell or otherwise dispose of any real property of the Accountholder.

## **24. CONTRACTING OUT OF THE PPSA**

24.1. The Accountholder:

(a) waives the right under section 157 of the PPSA to receive a copy of the verification statement verifying registration of a financing statement or a financing change statement relating to a security interest created under these Terms and Conditions; and

(b) contracts out of its rights to receive any other notice or statement under any other provision of the PPSA (including for the avoidance of doubt, any of the provisions specified in clause 24.2).

24.1. To the fullest extent permitted by the PPSA, the parties agree to contract out of sections 95, 117, 118, 120, 121(4), 125, the second sentence of section 126(2), sections 129(2), 129(3), 130, 132(3)(d), 132(4), 135, 142 and 143, which sections (or parts of sections) shall not apply.

