

# TERMS AND CONDITIONS

## GENERAL

### 1. What is the purpose of this contract?

- 1.1 This contract sets out the terms and conditions that apply when you (“you” and “your”) establish an account with, and purchase **products** from **Waitomo Petroleum Limited** (“we”, “us” and “our”).
- 1.2 The contract also sets out the additional specific terms that apply to **Waitomo Petroleum Ltd** (“we”, “us”, and “our”) cardholders.

### 2. What information about you can we collect?

- 2.1 You agree that we may obtain information about you to assess your credit worthiness, enforce any rights under this contract and market any of our **products** to any other entity.
- 2.2 You agree that we may give that information to any person for the above purposes. You may request access to any information that we hold about you and ask us to correct any mistakes in it.

### 3. What are the products we are supplying?

- 3.1 In these terms and conditions “**products**” includes, without limitation, the following:
  - the supply of petroleum products including bulk fuel supply, on-site fuel supply, fuel cards, fuel storage solutions (including tanks), lubricants, solvents and cleaning products; and
  - all testing and analysis services; and
  - all products and services identified in any order form, supply request, email, quotation or in any invoice issued by us to you, which documents are deemed to be incorporated into and form part of our contract with you.

### 4. What is the price of the products?

- 4.1 The price of the **products** is as agreed between you and us in writing.
- 4.2 If no price is agreed to in writing, the **products** will be treated as supplied at the current price that we generally supply those **products** at the time we enter the contract with you.
- 4.3 A specific freight charge may apply in addition to the price. The price excludes GST or any other applicable taxes.

### 5. What and when must you pay us?

- 5.1 You agree to pay us:
  - as per your agreed credit terms. For statements issued weekly, in full on or before the Thursday following the date of your invoice. For statements issued monthly, in full on or before the 20th of the month following the date of your invoice (“the due date”);
  - interest on any amount you owe after the due date at the rate of 2.5% per month or part month; and
  - costs, including debt collection and legal costs on a solicitor client basis, which we may incur as a consequence of having to enforce any of our rights contained in this contract.

### 6. When does delivery occur?

- 6.1 We are responsible for the **products** only until they are delivered to you.

### 7. What security rights do we have?

- 7.1 Until you have paid us in full for all **products** supplied, we retain ownership of the products we have supplied.
- 7.2 Until you have paid us in full for all **products** supplied, it is agreed that, pursuant to the Personal Property Securities Act 1999 (“the Act”): (i) we have a security interest in all **products** supplied by us to you; and (ii) this contract which has been agreed to by you, together with any invoice describing the **products** supplied, constitutes a security agreement pursuant to the Act.
- 7.3 If you default (as defined in the Act) or if we consider a default is likely to occur or the products are “at risk” (as defined in the Act), you give us an irrevocable authority and licence to enter at any reasonable time, premises occupied by you or on which **products** we have supplied are situated and remove and repossess those **products** (“the repossession”), without the requirement for any further notice.
- 7.4 We are not liable for any costs, damages, expenses or losses incurred by you or any third party nor liable in contract or in tort as a result of the repossession and you agree to indemnify us for any costs, damages, expenses or losses incurred as a consequence of the repossession.
- 7.5 It is also agreed that we are not obliged to comply with our obligations under sections 107 (2) (a) to (e) and 107 (g) to (i) of the Act and that you will not register a financing change statement without our prior written consent.
- 7.6 Further you agree to waive your entitlement to receive any verification statement or the notice of sale referred to in section 114 (1) (a) of the Act and that nothing in sections 133 and 134 shall apply.
- 7.7 Following the repossession, we are entitled to sell the repossessed **products** or retain the repossessed **products** and give credit for such reasonable amount as we shall determine.

### 8. What is the limitation on our liability?

- 8.1 The Consumer Guarantees Act 1993, the Contract and Commercial Law Act 2017 and other statutes and regulations may imply warranties or conditions or impose obligations upon us which cannot by law be excluded or contracted out of (“the statutory restrictions”).

- 8.2 Subject to the statutory restrictions, it is agreed by you that we are not liable to you for any loss or damage of any kind whatsoever, arising from the supply of products by us to you, including consequential loss, whether suffered or incurred by you or another person or entity and whether in contract or tort (including negligence) or otherwise and irrespective of whether such loss or damage arises directly or indirectly from **products** provided by us to you.
- 8.3 You agree that you are in trade, and the account is established for trade purposes and accordingly the provisions of the Consumer Guarantees Act 1993 and any other right, duty, or liability arising under a contract of sale by implication of law, do not apply to the supply of products to you.

#### **9. What rights do we have to cancel this contract?**

- 9.1 We have the right by notice to suspend or cancel any part of any contract for the supply of **products** to you if you fail to pay any money owing after the due date or breach any condition contained in this contract.

### **WAITOMO FUEL CARD**

#### **10. What additional specific conditions apply to our cardholders?**

- 10.1 In our cardholder agreement with you the words and phrases below are defined as follows:
- “Account Holder” means, if different from the person whose name is imprinted by us on the card, the person who has entered this agreement with us whose full legal name is stated on the account application;
  - “cardholder” means in respect of a:
    - i) the person whose name is imprinted by Waitomo, on the Card
    - ii) the authorised person representing the company/business whose name is imprinted by Waitomo, on the Card.
  - “Credit/Refund” means a credit/refund assigned to the Cardholder processed via an Electronic Transaction;
  - “Card Cloud network” means Waitomo’s electronic funds transfer at point of sales network;
  - “electronic transaction” means a Waitomo Fuel Card transaction effected through the Card Cloud network;
  - “other goods” means those goods which are not products and, subject to the terms the Waitomo Fuel Card is issued on, are permitted to be purchased by the cardholder by presentation of the Waitomo Fuel Card;
  - “PIN” stands for personal identification number issued by Waitomo to, or selected by, the cardholder in relation to a Waitomo Fuel Card;
  - “products” has the meaning as defined earlier in these terms and conditions;
  - “Waitomo Fuel Card” and “card” mean the Waitomo Fuel Card issued by us to the Cardholder;
  - “Waitomo outlets” means Waitomo Fuel Stops, Waitomo Diesel Stops, Waitomo Dealerships, depots and fuel dispensing facilities throughout New Zealand where Waitomo Fuel Cards are able to be used; and
  - “Waitomo Price” means the relevant price for products agreed in the customer’s account with Waitomo.
  - In this agreement unless the context otherwise requires or specifically otherwise states:
    - i) if the cardholder comprises more than one person, each of those persons’ liability is joint and several;
    - ii) reference to a party or person includes any form of entity and their respective successors, assignees and representatives;
    - iii) amounts are in New Zealand dollars; the singular includes the plural and vice versa and time is of the essence.

#### **11. Who retains ownership of the card?**

- 11.1 Waitomo retains ownership of, and title to, any Waitomo Fuel Card issued to a cardholder.

#### **12. What is the cardholder required to do?**

- 12.1 The cardholder must ensure a valid PIN has been set for the Waitomo Fuel Card for prevention of unauthorised or fraudulent use by any other person.
- 12.2 The cardholder must keep the card in a safe place at all times and ensure no-one else uses it. The cardholder cannot assign or pass on the obligations under this agreement to any other person.

#### **13. How is the card to be used?**

- 13.1 Any cardholder who is authorised by us may use the Waitomo Fuel Card for the purchase of fuel and oil from Waitomo outlets.
- 13.2 No purchase on a Waitomo Fuel Card is complete until the cardholder has properly completed an electronic transaction.
- 13.3 The card cannot be used to obtain cash from a Waitomo outlet or to purchase Waitomo gift vouchers or any other gift or petrol vouchers which may be available at the Waitomo outlet.
- 13.4 Waitomo Fuel Card purchases are charged at the lower of either the Waitomo Price or those which are charged at the relevant Waitomo outlet.
- 13.5 No single transaction on Waitomo Fuel Cards is able to exceed the transaction limit assigned to that card, transactions are not permitted to be split into smaller amounts and processed individually.
- 13.6 Where the cardholder, in any transaction, fails after three attempts to properly enter the PIN and have it accepted by the Card Cloud network, no purchase will be made by the cardholder.
- 13.7 The cardholder shall keep us informed of any change of address of the cardholder during the use of the card and the operation of the account.

#### **14. What costs apply?**

- 14.1 The cardholder will pay to us any transaction fee for each transaction on the Waitomo Fuel Card and any government charges, taxes, duties or levies, including GST, which may be applicable from time to time and any other fees charged by us.

#### **15. What happens when the card is lost, stolen or mislaid?**

- 15.1 If the card is lost, stolen, mislaid or the PIN number disclosed or if the cardholder knows the card is in the possession of another person, the cardholder shall immediately notify us of the loss and give us all relevant information.
- 15.2 Any delay may make the cardholder and account holder liable for unauthorised transactions processed on the Waitomo Fuel Card before the loss or theft was reported.
- 15.3 Provided the cardholder has complied with these terms and conditions and has made immediate notification of the loss of the card, in the event of subsequent unauthorised use of the card the maximum liability of the cardholder to us shall be \$50.00.
- 15.4 However, where the cardholder has not complied with these terms and conditions and there has been unauthorised use of the card, or when the cardholder has contributed to the loss by unreasonably delaying notification to us of a failure to retain possession of the card or by any fraudulent or negligent act, the cardholder's liability shall be the lesser of:
  - i) the actual loss at the time the cardholder notified us or the maximum amount the cardholder would have been able to access over this period; or
  - ii) the total credit available from the cardholder's account.
- 15.5 If the cardholder's action was unintentional the cardholder still may be liable for the loss if the cardholder has not complied with these terms.

#### **16. When is a card replaced?**

- 16.1 We will replace any lost, stolen or damaged card, at the cardholder's request and on payment of any applicable fees. Any replacement card will be subject to the terms and conditions of this agreement as if it were the original card.
- 16.2 We may, at any time, charge a fee for a replacement card.

#### **17. When does a cardholder agreement commence and when does it terminate?**

- 17.1 This agreement shall commence when the cardholder is notified by us that they have authority to use the Waitomo Fuel Card.
- 17.2 The cardholder may terminate this agreement by giving us 14 days' written notice of such termination.
- 17.3 We may terminate this agreement at any time without notice to the cardholder.
- 17.4 On termination, the cardholder will cut the card in two and return both pieces of the card to us.
- 17.5 The cardholder and account holder, if different, will still be liable for any transactions made on the cardholders account and any other liability or obligation under this agreement up to the time of termination.

#### **18. What other conditions apply to cardholders?**

- 18.1 We may vary any or all of the terms of this agreement at any time by giving the cardholder 21 days' notice in writing if the change affects the cardholder's maximum liability for losses or adjusts any transaction limits.
- 18.2 We may at any time correct any error relating to a transaction on Waitomo Fuel Card, whether or not the correction is in the cardholder's favour.
- 18.3 Any difficulties the cardholder may experience with products or other goods purchased on a Waitomo Fuel Card remain the sole responsibility of the Waitomo outlet from which they were purchased, without recourse to Waitomo.
- 18.4 Any notice given by the cardholder must be marked to the attention of the manager and received by us either by facsimile or post.
- 18.5 Any notice given by us is delivered either to a company's registered office or to an individual's last known address or by public notice in the applicable metropolitan paper.

#### **19. What also are you agreeing to in this agreement?**

- 19.1 We are not liable for delay or failure to perform our obligations if the cause of the delay or failure is beyond our control.
- 19.2 Whether or not we can satisfy your order, may depend on stock supply.
- 19.3 If we fail to enforce any of the terms and conditions contained in this agreement, it shall not be deemed to be a waiver of any of the rights or obligations we have under this agreement.
- 19.4 If any of these terms and conditions shall be invalid, void or illegal or unenforceable, the validity existence, legality and enforceability of the remaining terms and conditions shall not be affected, prejudiced or impaired.

These terms and conditions are subject exclusively to New Zealand law and any dispute is to be determined exclusively within New Zealand jurisdiction.