

FUEL SUPPLY TERMS AND CONDITIONS

1 Fuel Supply Terms and Purchase Orders

- 1.1 MJB agrees to sell and the Customer agrees to buy Fuel in accordance with these Terms.
- 1.2 The Customer acknowledges that these Terms are deemed to be incorporated into all Purchase Orders accepted by MJB and all supplies of Fuel to the Customer.
- 1.3 These Terms will prevail over any inconsistent terms in any of the Customer's documents and will supersede all previous negotiations and representations, whether oral or written for the same fuel, unless otherwise agreed by MJB in writing.
- 1.4 All Purchase Orders will constitute an offer to buy the Fuel specified and will be subject to acceptance by MJB in its absolute discretion.
- 1.5 If the Customer submits a Purchase Order, and Fuel is delivered or invoiced to the Customer, or the Customer makes any payments to us, the Customer is taken to have accepted these Terms. A Purchase Order will be binding on MJB upon the delivery of the Fuel.
- 1.6 Subject to clause 1.5, a Purchase Order cannot be varied or cancelled by the Customer once accepted by us without our written consent. We will not agree to any variation or cancellation unless the Customer agrees to indemnify us for any reasonable costs and expenses incurred as a result of or in connection with the variation or cancellation and must pay any reasonable variation or cancellation charge set by us.
- 1.7 Once MJB have accepted a Purchase Order, MJB will use reasonable endeavours to supply the Fuel to the Customer. MJB reserves the right to vary or cancel a Purchase Order upon written notice to the Customer.
- 1.8 When MJB delivers the Fuel, a separate contract forms between the Customer and MJB on these Terms.

2 Delivery of Fuel

- 2.1 Fuel may be delivered by MJB to the Customer in the following two ways, either:
 - (a) MJB may supply and deliver Fuel into the Customer's nominated equipment or site(s) at Melbourne Airport (**Delivery Sites**); or
 - (b) MJB may permit Customers to collect Fuel at a MAP Pump.
- 2.2 MJB is only obliged to supply Fuel against a Purchase Order that it has accepted.
- 2.3 Purchase Orders must specify if the Fuel will be delivered at the Delivery Site(s) or collected by the Customer from the MAP Pump.
- 2.4 Risk in the Fuel will pass to the Customer upon delivery of the Fuel at the Delivery Site when the Fuel passes the hose connection of MJB's truck or other vehicle or vessel at the Delivery Site or at the MAP Pump when the Fuel is dispensed from a bowser (as applicable).

- 2.5 Title to the Fuel will not pass to the Customer until the Customer has made full payment for the Fuel.
- 2.6 MJB's delivery record is conclusive evidence of the volume of Fuel delivered or collected unless the Customer objects in writing and provides MJB reasonable grounds and supporting evidence for such objection within 48 hours of delivery.
- 2.7 The Customer must provide MJB with safe access to the Delivery Site.
- 2.8 All Fuel storage facilities, loading hoses and ancillary equipment at the Delivery Site must be safe, in good working order and compliant with all relevant Laws.
- 2.9 MJB will monitor and record all Fuel dispensed to the Customer as part of its loss prevention procedures.
- 2.10 The Customer warrants that MJB will have access to, and use of facilities at, the Delivery Site to safely effect delivery of the Fuel; MJB's trucks or other vehicle or vessel can safely access, use and depart from the Delivery Site; and the Delivery Site complies with MJB's safety, maintenance, environmental and other standards and requirements as may be notified to the Customer from time to time.
- 2.11 To the full extent permitted by law, the Customer must indemnify MJB against any and all loss or damage suffered, or cost or expense incurred by us as a result of a Customer's refusal or attempted refusal to accept delivery of the Fuel.

3 General Fuel Terms

- 3.1 MJB is not liable for any failure to supply Fuel due to a lack of, unavailability of, or suspension of MJB's supplies.
- 3.2 The Customer warrants that the Fuel will be used by the Customer with a view to only be used for commercial or business purposes at MAP and no Fuel will not be resold by the Customer.
- 3.3 The Customer:
 - (a) is solely responsible for all fuel testing; and
 - (b) must comply with all Laws relating to the storage, transport and use of the Fuel.
- 3.4 MJB warrants that the Fuel will comply with all Laws.
- 3.5 MJB warrants that all Fuel sold to the Customer will be in accordance with the Fuel Quality Standards Act and specifically in accordance with approval granted under section 13 of the Fuel Quality Standards Act.
- 3.6 To the maximum extent permitted by law and subject to this clause 3, MJB excludes all warranties, representations and guarantees, including without limitation those relating to the quality, merchantability, fitness or suitability of the Fuel for any particular purpose will have any particular component, quality or ability.
- 3.7 The Customer acknowledges and agrees that it must:
 - (a) enter any details requested by MJB into the spaces provided in the sign-in sheet supplied by MJB prior to dispensing Fuel from a MAP Pump;



- (b) remove waste or rubbish and ensure servicing or repairs of vehicles are not carried out in close proximity to the MAP Pump; and
- (c) inform the Customer's personnel and contractors of the existence of 24-hour surveillance cameras in close proximity to the MAP Pump (which monitor the security of MJB's equipment and the distribution of Fuel) and the possible disclosure of personal information to the police, MJB's legal advisers and the Customer at MJB's discretion and without notice if an incident occurs.

4 Price of Fuel and Payment Terms

- 4.1 Subject to clause 4.3, the price for the Fuel will be as stated in our price list (as shared with the Customer from time to time) as at the date of the relevant Purchase Order unless we have otherwise agreed in writing.
- 4.2 MJB will issue an invoice at the end of each month to the Customer with respect to all Fuel delivered to the Customer at a Delivery Site and or collected by the Customer at the MAP Pump.
- 4.3 It is the Customer's responsibility to pay MJB:
 - (a) the Fuel price set by MJB at its discretion from time to time;
 - (b) any expenses incurred by MJB in enforcing its rights under these Terms, including solicitors' fees (on a full indemnity basis) and collection agents' fees;
 - (c) a fee of AUD\$30.00 for each dishonoured payment transaction;
 - (d) an additional fee of AUD\$25.00 is incurred on weekends and an additional fee of AUD\$50.00 is incurred on public holidays;
 - (e) all invoiced amounts within 30 days following the date of the invoice unless MJB have agreed to alternative terms;
 - (f) interest in an amount notified by MJB from time to time, currently being 18% per annum, calculated daily and compounded monthly on all overdue amounts on and from the date the monies first became due to MJB; and
 - (g) all taxes, excise, levies and other government charges including GST payable in respect of any supply of Fuel.
- 4.4 The Customer acknowledges and agrees that:
 - (a) in the event of a default of payment under these Terms we may disclose all information relating to the Customer to our collection agency for the purpose of receiving any or all amounts outstanding;
 - (b) it is liable to pay our reasonable costs with respect to collecting any overdue monies, including legal fees, debt collection costs and payment of our administrative costs;
 - (c) MJB may demand immediate payment of all amounts outstanding (whether or not then due and payable) if the Customer does not comply with these Terms.
- 4.5 Time is of the essence for the obligations under this clause 4, which are absolute and unconditional and cannot be set-off or reduced for any reason.
- 4.6 Without limiting its rights at law or pursuant to these Terms, MJB may suspend the supply of Fuel to the Customer and require immediate payment of all moneys owed by the Customer to MJB if the Customer is in breach of a provision of these Terms.
- 4.7 If GST is imposed on any supply made by MJB, the Customer must pay, in addition to any consideration payable by the Customer for the supply, an additional amount calculated by multiplying the prevailing GST rate by the consideration for the relevant supply payable by the Customer provided that MJB issues a valid tax invoice to the Customer within 30 days after the occurrence of the event that causes the GST liability of MJB on any taxable supply to the Customer to be attributed to a particular tax period.
- 4.8 Clause 4.7 does not apply if the consideration payable by the Customer for the supply includes GST. However, all amounts are, unless otherwise indicated, expressed exclusive of GST.
- 4.9 If for any reason the amount recovered by MJB under clause 4.7 differs from the amount of GST payable at law by MJB in respect of the supply, the amount payable by the Customer to MJB will be adjusted accordingly upon MJB delivering a valid adjustment note to the Customer.
- 4.10 The Customer warrants that it is not insolvent at the time of entering into these Terms and further warrants that all information supplied to MJB in respect of these Terms is true and correct in every particular.
- 4.11 The Customer authorises MJB to make any credit inquiry of any third party, including any supplier, corporation, banking institution, lending authority, business house, or credit reference resource company as to the credit-worthiness of the Customer to fulfil its obligations under these Terms.
- 4.12 The Customer warrants that all storage tanks, pumps, hoses and other equipment that have not been supplied by MJB and are used for the delivery, storage and dispensing of Fuel supplied and delivered under these Terms are sound, intact, not leaking and otherwise in good working condition. In the event the Customer's equipment experiences damage, leakage, causes environmental damage, or experiences any other operational problems, the Customer hereby indemnifies MJB from all claims, loss, suits and damages suffered by MJB as a result of a breach of the warranty given by the Customer in this clause 4.12.
- 4.13 Notwithstanding clause 4.12 the Customer acknowledges any clean-up of a site due to a leakage, seepage or spillage of Fuel shall be dealt with promptly and shall meet all safety regulations and standards as defined by the Environmental Protection Authority.
- 4.14 In the event that a leakage; seepage or spillage of Fuel is caused by MJB during delivery, it is MJB's responsibility for clean-up.



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5 Disputes

- 5.1 Until the relevant provisions of this clause 5 have been complied with, no party will commence any action, bring any proceedings or seek any relief or remedy in a court or by arbitration, except that nothing in this clause 5 prevents:
- a party from seeking interlocutory or equitable relief from a court;
 - MJB from taking any action it considers necessary, including debt recovery proceedings, to recover unpaid amounts; or
 - a party from exercising its rights under these Terms, including in the case of MJB its rights under clause 4.6.
- 5.2 Any dispute, controversy or claim (**Dispute**) must be the subject of a notice sent from any party to the other party's last notified email address setting out the material particulars of the Dispute, and each party must endeavour in good faith to resolve the Dispute expeditiously.
- 5.3 If the Dispute has not been resolved or an alternate method of resolving the Dispute has not been agreed within 7 days of the date of a notice issued pursuant to clause 5.2, or a longer period if the parties agree, then either party which has complied with this clause 5 may commence court proceedings in relation to the Dispute.

6 Liability

- 6.1 The Customer must comply with all applicable Laws.
- 6.2 The Customer must promptly notify MJB of harm to any person, damage to any property, any Fuel spills and any loss, damage or malfunction of MJB's equipment.
- 6.3 The Customer must indemnify MJB against and release MJB from all and any loss or liability (except to the extent that the loss or liability is caused by MJB's negligence) arising in connection with:
- harm to any persons and loss or damage to any property caused by the Customer or its personnel or contractors at any Site;
 - any loss, theft, spill, leak or escape of Fuel from any fuel storage facility or equipment on a Delivery Site or after it is dispensed at a MAP Pump;
 - the Customer's use, possession or storage of Fuel;
 - the Customer's failure to fully comply with clauses 2.7 or 3.3; and
 - the quality of Fuel where there was commingling of products/materials (including Fuel) through a means of delivery employed by the Customer.
- 6.4 MJB excludes to the full extent possible under law, all implied terms and warranties whether statutory or otherwise, relating to the subject matter of these Terms.
- 6.5 To the maximum extent permitted by applicable law and subject to clause 6.6, MJB's liability in connection with the supply of defective Fuel, including for breach of any condition or warranty which cannot be excluded by law, will be limited to (at MJB's discretion):
- the replacement of the supplied Fuel or the supply of equivalent Fuel products; or

- the payment of the cost of replacing the supplied Fuel or the cost of acquiring equivalent Fuel products,
- 6.6 MJB shall be liable to the Customer in connection with the direct and reasonable costs to repair damage to property caused solely and directly by the defective Fuel supplied by MJB, provided that:
- is has been proven by the Customer that the Fuel was defective and the damage was caused solely and directly by the defective Fuel supplied by MJB;
 - the defective Fuel supplied by MJB was not commingled with fuel supplied by any other supplier;
 - the Fuel must be tested and a sample retained (of at least 5 litres) of the defective Fuel supplied by MJB and must give MJB the reasonable opportunity to inspect, sample and test any Fuel in respect of which a claim has been made under this clause; and
 - the Customer must use reasonable endeavours to minimise any losses or damage arising from an alleged defect in quality.
- 6.7 To the extent permitted by law neither party will be liable for any indirect or consequential loss.
- 6.8 To the extent permitted by law, MJB will not be liable in respect of any loss, damage or cost whatsoever however arising, including for breach or negligence, to an extent which exceeds the price for the volume of Fuel to which the loss, damage or cost relates or the total amount paid by the Customer to MJB in aggregate for the supply of Fuel.

7 Relationship between the Parties

- 7.1 MJB is as an independent contractor. Nothing in these Terms constitutes or will be deemed to constitute:
- either party as being an agent of the other party for any purpose whatsoever; or
 - a partnership or joint venture between the parties; or
 - an employee/employer relationship between the parties.
- 7.2 Neither party may incur any liability on behalf of the other or in any way pledge or purport to pledge the other party's credit or in any other fashion make any contract binding upon the other party without the written approval of the other party.

8 Force Majeure

- 8.1 Notwithstanding anything else, neither party will be liable for any delay or failure to perform its obligations (other than a failure to pay money) resulting from an event or series of events beyond its reasonable control (**Force Majeure Event**).
- 8.2 Each party must resume compliance with its obligations as soon as a Force Majeure Event ceases to affect its performance of its obligations.



- 8.3 A party affected by a Force Majeure Event must as soon as practical notify the other party of the Force Majeure Event, the obligations affected and its expected duration.

9 PPSA

- 9.1 Terms used in this clause 9 have the meaning given to them in the PPSA.
- 9.2 The supply of Fuel prior to payment gives rise to a Purchase Money Security Interest. MJB may register Security Interests on the Personal Property Securities Register.
- 9.3 For the purposes of the PPSA, the Customer irrevocably and unconditionally waives its right to receive any notice from MJB in connection with the registration or enforcement of a Security Interest granted or arising under these Terms.

10 General Terms

- 10.1 **(Severance)** If any provision of these Terms is or is determined to be illegal, invalid, void or voidable the legality or validity of the remainder of these Terms will not be affected and will continue in full force and effect.
- 10.2 **(Variation)** MJB may vary or replace these Terms from time to time by giving the Customer at least 7 days' prior written notice. Submission by the Customer of a Purchase Order after the date the variation takes effect will constitute acceptance by the Customer of the Terms as varied or replaced.
- 10.3 **(Governing Laws)** These Terms are governed by the laws of Victoria and the parties irrevocably agree that the courts of that state have exclusive jurisdiction to hear and decide any suit, action or proceedings and settle any dispute which may arise.
- 10.4 **(Privacy)** MJB will collect information in relation to the Customer, for the purpose of providing the Fuel to the Customer under these Terms, and in accordance with the laws relating to the collection and disclosure of personal information under the Privacy Act 1998 (Cth) as amended from time to time.
- 10.5 **(Assignment)** The Customer must not assign its benefits or novate its obligations under these Terms without our prior written consent. We may assign our rights and novate our obligations under these Terms to another person without the consent of the Customer.
- 10.6 **(Waiver)** Our rights may only be waived in writing and signed by us. The exercise of a right by us does not prevent any further exercise of that right or any other.
- 10.7 **(Trustee)** If the Customer has entered into these Terms in the capacity of as trustee of any trust under any trust deed and whether or not we have notice of the trust then the Customer enters into these Terms as trustee of the Trust as well as personally. The Customer represents and warrants that the Customer has power to enter into these Terms and to perform the obligations imposed under these Terms as trustee.

11 Definitions

Customer means the customer acquiring Fuel on these Terms.

Delivery Site has the meaning set out in clause 2.1.

Force Majeure Event has the meaning set out in clause 8.1.

Fuel means fuel or fuel additives supplied by MJB.

Fuel Quality Standards Act means the *Fuel Quality Standards Act 2000 (Cth)* as amended from time to time.

Law means legislation, ordinances, regulations, by-laws, local laws, orders, proclamations, governmental approvals, principles of law or equity and a reference to any Law includes all subordinate Law made under it and any Law amending, consolidating or replacing it.

MAP means Melbourne Aviation Precinct at Melbourne Airport 24 Operations Rd, Tullamarine VIC 3043.

MAP Pump means the fuel dispensing bowser located at MAP.

MJB or us or we means Melbourne Jet Base Pty Limited ACN 625 174 110 or any successors or assigns.

Melbourne Airport means the airport operated Australia Pacific Airports (Melbourne) Pty Ltd in Tullamarine, Victoria and includes MAP.

PPSA means *Personal Property Securities Act 2009 (Cth)*.

Purchase Order means the Customer's request for Fuel as communicated by the Customer to MJB sent by any medium and in any form.

Site means each MAP Pump and Delivery Site.

Terms includes these terms of trade for the sale of the Fuel and the new customer registration form.