

## TERMS & CONDITIONS OF TRADE C.O.D ACCOUNTS

### DEFINITIONS:

**Customer** means the entity named under the heading "Customer's Details" in the attached credit application and includes the Customer's successors and assigns, any guarantors of the Customer and, if more than one person, each shall be jointly and severally liable.

**Freedom Fuels** means Freedom Fuels Australia Pty Ltd and/or any of its subsidiaries or related entities as defined by the Corporations Act 2001.

**Products** means Freedom Fuels' motor fuels, lubricants and other products and services provided at any retail site or depot.

1. Pricing of the Products may be subject to daily fluctuation as published on Freedom Fuels' website or as otherwise advised.
2. All orders for bulk fuel or onsite refueling must be placed by the Customer with Freedom Fuels in accordance with Freedom Fuels' nominated ordering process as advised from time to time.
3. Deliveries will be made during the hours nominated by Freedom Fuels. Any time quoted for delivery is an estimate only. Freedom Fuels will not be liable for any delay in delivery or early delivery and may suspend delivery or extend delivery time as Freedom Fuels in its absolute discretion sees fit. If there is a variation from the estimated time of delivery Freedom Fuels will use reasonable commercial endeavours to notify the Customer of the variation.
4. If a Site is not, in Freedom Fuels' sole discretion, suitable for delivery of the Products then Freedom Fuels may suspend delivery until it is satisfied the Site is suitable for delivery.
5. If the Customer fails to take or accept delivery or give proper delivery instructions for the Products, then without prejudice to Freedom Fuels' rights at law, Freedom Fuels may store the Products and charge the Customer for all reasonable costs incurred by Freedom Fuels, including without limitation, the cost of storage and insurance for the Products.
6. Freedom Fuels shall not be obliged to make any supply or delivery of Products to the Customer if and for so long as the Customer is in default of payment or any other provision of this Agreement and also when:
  - a. When Freedom Fuels has a reasonable belief that the Customer is unable to pay for the supply;
  - b. When Freedom Fuels has a reasonable belief that the Customer is unable to receive or transport the petroleum product in compliance with all applicable occupational, health and safety requirements.
7. If there is a shortage of any Products resulting in Freedom Fuels being unable to meet the requirements of all of its Customers then Freedom Fuels may allocate among its Customers Freedom Fuels' available supply of product.
8. The Customer shall be responsible for the payment of all taxes, duties and other imposts, whether retroactive or not, levied on or in relation to the product, which amounts shall be charged to the Customer detailed within Freedom Fuels' invoice.
9. Risk in the Products purchased by the Customer is passed to the Customer when the Products are delivered to, or collected by, the Customer.
10. Title and property in the Products shall remain with Freedom Fuels until payment is made in full on all accounts held. The Customer acknowledges that until payment is made in full in relation to all accounts held with Freedom Fuels, it holds the Products as bailee for Freedom Fuels and in the event that it fails to make payment as due, or sells the Products to a third party prior to making payment in full, then it hereby:
  - a. assigns the benefit of any claim to Freedom Fuels against the third party;
  - b. will account to Freedom Fuels for any sale proceeds; and
  - c. consents to Freedom Fuels registering a purchase money security interest on any relevant register.
11. Freedom Fuels warrants that:
  - a. it will convey good title to Products supplied to the Customer under this Agreement; and
  - b. those Products will conform to the description referred to on the accompanying delivery or sales documentation and meet Freedom Fuels' standard specifications from time to time.
12. The Customer must inform Freedom Fuels of all complaints or claims in respect of the Products within two (2) days and further retain a sample for testing in accordance with Freedom Fuels' Products information Statement available on request or via Freedom Fuels' website.
13. Subject to any condition or warranty implied in favour of the Customer by the *Competition and Consumer Act 2010 (Cth)* or any other applicable law which cannot lawfully be excluded, to the fullest extent permitted by applicable law the liability of Freedom Fuels for defective Products including for breach of any implied condition or warranty will be limited to (at Freedom Fuels' discretion):
  - a. the replacement of the Products or the supply of equivalent products; and
  - b. the payment of the cost of replacing the Products or of acquiring equivalent products;provided however that notice of any complaint regarding the Products is received by Freedom Fuels in accordance with Clause 12.
14. Freedom Fuels will not be liable to the Customer or any other person in respect of any loss, injury or damage (including consequential loss or damage and whether due to negligence, deliberate conduct or any other cause and whether arising in contract, in tort, under statute or in any other way) which may be suffered or incurred or which may arise directly or indirectly as a result of or in any way connected with any Products supplied by Freedom Fuels to the Customer.
15. Payment must be made by the Customer C.O.D via the payment method as advised by Freedom Fuels upon acceptance of the Customer's order. Freedom Fuels reserves the right to vary the payment terms and method on fourteen (14) days prior written notice.
16. Freedom Fuels shall be entitled to charge interest on any money overdue during the period of default at a rate 2% higher than the rate for the time being charged by the Westpac Banking Corporation on unsecured overdrafts in excess of \$100,000.00.
17. If a Customer's payment via cheque or direct debit is dishonoured then the Customer will incur a \$50.00 dishonour administration fee in addition to any bank charges incurred by Freedom Fuels.
18. The Customer may not assign this Agreement without the prior consent of Freedom Fuels and must notify Freedom Fuels in writing within seven (7) days of any change of ownership of its business, shareholdings, directorships or corporate structure. The Customer will remain liable for any Products supplied after any such change until such time as Freedom Fuels approves such changes in writing.
19. The Customer must comply with all applicable laws and the policies, standards and other requirements of any Governmental Agency in relation to, and assumes all risks and liability (including all environmental risks and liability) arising from, the unloading, discharge, storage, handling or use of the Products sold under this Agreement.
20. The Customer acknowledges that to the extent of any inconsistency between the terms and conditions contained herein and any formal Freedom Fuels' Supply Agreement entered into that the terms of the Supply Agreement will prevail.