

**1. Definitions**

- 1.1 "Seller" means Skyfuel Australia Pty Ltd (ABN 93 068 890 764), its successors and assigns or any person acting on behalf of and with the authority of Skyfuel Australia Pty Ltd.
- 1.2 "Buyer" means the Buyer or any person acting on behalf of and with the authority of the Buyer.
- 1.3 "Guarantor" means that person (or persons), or entity, who agrees to be liable for the debts of the Buyer on a principal debtor basis.
- 1.4 "Goods" means Goods supplied by the Seller to the Buyer (and where the context so permits includes any supply of the Services) and are as described on the invoices, quotation, work authorisation or any other forms as provided by the Seller to the Buyer
- 1.5 "Services" means all services provided by the Seller to the Buyer and includes any advice or recommendations (and where the context so permits includes any supply of Goods).
- 1.6 "Skyfuel Carnet Card" means a card issued by the Seller to the Buyer for the purchase of Goods on credit in accordance with these terms and conditions.
- 1.7 "Price" means the cost of the Goods and/or Services as agreed between the Seller and the Buyer subject to clause 3 of these terms and conditions
- 1.8 "PPSA" means the *Personal Property Securities Act 2009* (Cth).
- 1.9 "Security Interest" means any:
  - 1) security for payment of money, performance of obligations or protection against default (including a mortgage, bill of sale, charge, lien, pledge, trust, power or title retention arrangement, right of set-off, assignment of income, garnishee order or monetary claim and flawed deposit arrangements); and
  - 2) thing or preferential interest or arrangement of any kind giving a person priority or preference over claims of other persons or creditors with respect to any property or asset and includes any agreement to create any of them or allow them to exist.

**2. Acceptance**

- 2.1 Any instructions received by the Seller from the Buyer for the supply of Goods and/or the Buyer's acceptance of Goods supplied by the Seller will constitute acceptance of these terms and conditions.
- 2.2 Where more than one Buyer has entered into this agreement, the Buyers will be jointly and severally liable for all payments of the Price.
- 2.3 Upon acceptance of these terms and conditions by the Buyer, these terms and conditions are irrevocable and can only be amended by written agreement between the Buyer and the Seller however the Seller may amend these terms and conditions by providing 7 days notice to the Buyer.
- 2.4 The Buyer undertakes to give the Seller at least fourteen (14) days notice of any change in the Buyer's name, address and/or any other change in the Buyer's details.
- 2.5 The use of a Skyfuel Carnet Card by the Buyer will constitute acceptance of these terms and conditions from the date of such use.

**3. Price and Payment**

- 3.1 At the Seller's sole discretion the Price will be either;
  - 1) as indicated on invoices provided by the Seller to the Buyer in respect of Goods supplied; or
  - 2) the Seller's quoted Price (subject to clauses 3.2 and 3.3) which will be binding upon the Seller provided the Buyer accepts the Seller's quotation in writing within thirty (30) days of it being provided.
- 3.2 In addition to the Price, the Seller reserves the right to charge any Government taxes or charges which may be imposed in respect of the Goods and Services, including any stamp duties and financial institution duties, and any fees for the use of a Skyfuel Carnet Card. If GST is imposed on any supply made in accordance with these terms and conditions, the Buyer must pay the Seller an amount equal to the GST payable for the taxable supply, subject to the Buyer receiving (if required by law) a valid tax invoice for the supply at the time of payment.
- 3.3 The Seller reserves the right to change the Price in the event of a variation to the Seller's quotation or for any other reason.
- 3.4 Time for payment for the Goods is of the essence and will be stated on the invoice or any other forms provided to the Buyer. If no time is stated then payment will be due fourteen (14) days following the date of the invoice.
- 3.5 Payment may be made by cash, cheque, bank cheque, credit card (plus a surcharge of up to 2.75% of the Price), direct credit, or by any other method as agreed between the Buyer and the Seller.
- 3.6 GST and other taxes and duties that may be applicable will be added to the Price except when they are expressly included in the Price.

**4. Skyfuel Carnet Cards**

- 4.1 The Skyfuel Carnet Card remains the property of the Seller at all times.
- 4.2 The Seller may, at any time, require the return of the Buyer's Skyfuel Carnet Card and the Buyer must return it to the Seller within twenty four (24) hours of the Seller requesting its return.
- 4.3 For every Skyfuel Carnet Card, the Buyer may specify a nominated aircraft. The Card will be embossed with the registration of the aircraft, and must only be used to purchase Goods for the nominated aircraft. If no aircraft is nominated, the Skyfuel Carnet Card may be used in respect of any aircraft.
- 4.4 If any Skyfuel Carnet Card is lost, stolen or misused, the Buyer must notify the Seller immediately and confirm the notification in writing within twenty four (24) hours. The Buyer will not be liable for any unauthorised use of the Skyfuel Carnet Card made after written notification is received by the Seller.
- 4.5 Unless otherwise notified by the Seller, the Buyer will be charged the relevant posted airfield price as set by the relevant oil company from time to time.

**5. Delivery of Goods**

- 5.1 Delivery of, and risk in, the Goods will take place when the Buyer takes possession of the Goods at the Buyer's address (in the event that the Goods are delivered by the Seller).
- 5.2 At the Seller's sole discretion the costs of delivery are;
  - 1) included in the Price, or
  - 2) in addition to the Price, or
  - 3) for the Buyer's account.
- 5.3 The Buyer must make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery. In the event that the Buyer is unable to take delivery of the Goods as arranged then the Seller shall be entitled to charge a redelivery fee.
- 5.4 Delivery of the Goods to a third party nominated by the Buyer is deemed to be delivery to the Buyer for the purposes of this agreement.
- 5.5 The Seller may deliver the Goods by separate instalments. Each separate instalment will be invoiced and must be paid for in accordance with these terms and conditions.
- 5.6 The Buyer must take delivery of the Goods tendered notwithstanding that the quantity so delivered is either greater or lesser than the quantity purchased provided that;
  - 1) such discrepancy in quantity does not exceed 5%, and
  - 2) the Price is adjusted on a pro-rata basis to the discrepancy.
- 5.7 The failure of the Seller to deliver will not entitle either party to treat these terms and conditions as having been repudiated.
- 5.8 The Seller will not be liable for any loss or damage incurred or suffered by the Buyer as a result of a failure by the Seller to deliver the Goods (or any of them) promptly or at all.

**6. Title**

- 6.1 The Buyer and Seller agree that ownership of the Goods will not pass until:
  - 1) the Buyer has paid all amounts owing for the particular Goods, and
  - 2) the Buyer has met all other obligations due by the Buyer to the Seller in respect of all contracts between the Seller and the Buyer.
- 6.2 Receipt by the Seller of any form of payment other than cash will not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then the Seller's ownership or rights in respect of the Goods will continue.
- 6.3 It is further agreed that:
  - 1) where practicable the Goods will be kept separate and identifiable until the Seller has received payment and all other obligations of the Buyer are met; and
  - 2) until such time as ownership of the Goods passes from the Seller to the Buyer the Seller may give notice in writing to the Buyer to return the Goods or any of them to the Seller. Upon such notice the rights of the Buyer to obtain ownership or any other interest in the Goods will cease; and
  - 3) the Seller may at its discretion recall Goods in transit whether or not delivery has been made; and
  - 4) if the Buyer fails to return the Goods to the Seller then the Seller or the Seller's agent may enter upon and into land and premises owned, occupied or used by the Buyer, or any premises as the invitee of the Buyer, where the Goods are situated and take possession of the Goods by any means necessary; and
  - 5) the Buyer is only a bailee of the Goods and until such time as the Seller has received payment in full for the Goods then the Buyer holds any proceeds from the sale or disposal of the Goods on trust for the Seller; and
  - 6) the Buyer must not deal with the money of the Seller in any way which may be adverse to the Seller.

**7. PPSA provisions**

- 7.1 In consideration of the Buyer supplying the Goods to the Seller, by accepting the Goods and until such time as full payment of the Price for the Goods has been received, the Buyer:
  - 1) acknowledges that it grants to the Seller a purchase money security interest (PMSI) as defined by the PPSA and/or Security Interest in the Goods;
  - 2) agrees that a PMSI has attached to all Goods supplied now or in the future to the Buyer and that the attachment of the PMSI has in no way been deferred or postponed;
  - 3) acknowledges that the Seller reserves the right to register a financing statement in respect of any Goods supplied by the Seller to the Buyer pursuant to these terms and conditions;
  - 4) must promptly, on request by the Seller, execute all documents and do anything else reasonably required by the Seller to ensure that the PMSI and/or Security Interest created by these terms and conditions (if applicable) constitutes a perfected Security Interest under the PPSA over all Goods supplied from time to time;
  - 5) must not agree to allow any person to register a financing statement over any of the Goods supplied by the Seller without its prior written consent and the Buyer must immediately notify the Seller if it becomes aware of any person taking steps to register a financing statement in relation to the Goods;
- 7.2 If the Seller perfects any Security Interest it has in relation to the Goods, the Buyer must not do anything that results in the Seller having less than the security or priority granted by the PPSA that the Seller assumed at the time of that perfection.
- 7.3 The Buyer irrevocably grants to the Seller the right to enter upon the Buyer's premises, without notice, and without being in any way liable to the Buyer or to any third party, if the Seller has cause to exercise any of its rights under the PPSA, and the Buyer indemnifies the Seller from any claims made by any third party as a result of such exercise.
- 7.4 The Seller agrees to contract out of, waive or exclude such sections of the PPSA as the Seller may require, to the extent and subject to those sections being able to be excluded under the law.
- 7.5 The Buyer expressly agrees to:
  - (1) contract out of the enforcement provisions referred to at sections 115(1)(a) to (r)(inclusive) of the PPSA; and
  - (2) waive its right to receive a copy of any;
    - (a) financing statement or any financing change statement;
    - (b) verification statement under section 157 of the PPSA; and/or
    - (c) notice in relation to a registration event under section 175 of the PPSA, in respect of the Security Interest created by these terms and conditions.

**8. Buyer's Disclaimer**

8.1 The Buyer disclaims any right to rescind, or cancel the contract or to sue for damages or to claim restitution arising out of any misrepresentation made to the Buyer by the Seller and the Buyer acknowledges that the Goods are bought relying solely upon the Buyer's skill and judgement.

**9. Defects**

9.1 The Buyer must inspect the Goods on delivery and within twenty four (24) hours of delivery notify the Seller of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote.

9.2 If the Buyer fails to provide notice within the time period specified in clause 9.1 the Goods will be presumed to be free from any defect or damage.

9.3 For defective Goods which the Seller has agreed in writing that the Buyer is entitled to reject, the Seller's liability is limited to replacing the Goods.

9.4 Goods will not be accepted for return other than in accordance with 9.1 above.

**10. Australian Consumer Law**

10.1 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of *the Competition and Consumer Act 2010* (Cth) or the Fair Trading Acts in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable.

**11. Default & Consequences of Default**

11.1 The Buyer must pay interest on any overdue invoices.

11.2 The Interest will be calculated:

- (1) based on the rate of 2.5%;
- (2) on that part of an invoice that remains unpaid from time to time; and
- (3) daily and compound monthly.

11.3 If the Buyer defaults in payment of any invoice when due, the Buyer agrees to indemnify the Seller from and against all costs and disbursements incurred by the Seller in pursuing the debt including legal costs on a solicitor and own client basis and the Seller's collection agency costs.

11.4 Without prejudice to any other remedies the Seller may have, if at any time the Buyer is in breach of any obligation (including those relating to payment), the Seller may suspend or terminate the supply of Goods to the Buyer and any of its other obligations under these terms and conditions. The Seller will not be liable to the Buyer for any loss or damage the Buyer suffers because the Seller exercised its rights under this clause.

11.5 If any account remains overdue after thirty (30) days then an amount of the greater of \$27.50 (inclusive of GST) or 10% of the amount overdue (up to a maximum of \$200, inclusive of GST) will be levied for administration fees which sum will become immediately due and payable by the Buyer to the Seller. The administration fee is GST inclusive.

11.6 Without prejudice to the Seller's other remedies at law the Seller will be entitled to cancel all or any part of any order of the Buyer which remains unperformed and all amounts owing to the Seller will, whether or not due for payment, become immediately payable in the event that:

- 1) any money payable to the Seller becomes overdue, or in the Seller's opinion the Buyer will be unable to meet its payments as they fall due;
- 2) the Buyer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
- 3) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Buyer or any asset of the Buyer.

**12. Security and Charge**

12.1 Despite anything to the contrary contained herein or any other rights which the Seller may have:

- 1) where the Buyer and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Buyer and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to the Seller or the Seller's nominee to secure all amounts and other monetary obligations payable under these terms and conditions. The Buyer and/or the Guarantor acknowledge and agree that the Seller (or the Seller's nominee) will be entitled to lodge where appropriate a caveat, which caveat will be released once all payments and other monetary obligations payable hereunder have been met.
- 2) should the Seller elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Buyer and/or Guarantor agree to indemnify the Seller from and against all the Seller's costs and disbursements including legal costs on a solicitor and own client basis.
- 3) The Buyer and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint the Seller or the Seller's nominee as the Buyer's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 11.1.

**13. Cancellation**

13.1 The Seller may cancel these terms and conditions or cancel delivery of Goods at any time before the Goods are delivered by giving written notice. On giving such notice the Seller will repay to the Buyer any sums paid in respect of the Price. The Seller will not be liable for any loss or damage arising from such cancellation.

13.2 In the event that the Buyer cancels delivery of Goods the Buyer will be liable for any loss incurred by the Seller (including, but not limited to, any loss of profits) up to the time of cancellation.

**14. Privacy Act 1988 (Cth)**

14.1 The Buyer and/or the Guarantor/s agree for the Seller to obtain from a credit reporting agency a credit report containing personal credit information about the Buyer and Guarantor/s in relation to credit provided by the Seller.

14.2 The Buyer and/or the Guarantor/s agree that the Seller may exchange information about the Buyer and the Guarantor/s with those credit providers either named as trade referees by the Buyer or named in a consumer credit report issued by a credit reporting agency for the following purposes:

- 1) to assess an application by Buyer; and/or
- 2) to notify other credit providers of a default by the Buyer; and/or
- 3) to exchange information with other credit providers as to the status of this credit account, where the Buyer is in default with other credit providers; and/or
- 4) to assess the credit worthiness of Buyer and/or Guarantor/s.

14.3 The Buyer consents to the Seller being given a consumer credit report to collect overdue payment on commercial credit.

14.4 The Buyer agrees that personal credit information provided may be used and retained by the Seller for the following purposes and for other purposes as agreed between the Buyer and Seller or required by law from time to time:

- 1) provision of Goods; and/or
- 2) marketing of Goods by the Seller, its agents or distributors in relation to the Goods; and/or
- 3) analysing, verifying and/or checking the Buyer's credit, payment and/or status in relation to provision of Goods; and/or
- 4) processing of any payment instructions, direct debit facilities and/or credit facilities requested by Buyer; and/or
- 5) enabling the daily operation of Buyer's account and/or the collection of amounts outstanding in the Buyer's account in relation to the Goods.

14.5 The Seller may give information about the Buyer to a credit reporting agency for the following purposes:

- 1) to obtain a consumer credit report about the Buyer; and/or
- 2) allow the credit reporting agency to create or maintain a credit information file containing information about the Buyer.

14.6 The Seller must provide the Buyer with access to any credit information provided to the Seller within fourteen (14) days of a request being made by the Buyer for such access.

14.7 The Buyer will collect and use Personal Information (as that term is defined in the *Privacy Act 1988* (Cth) in accordance with its Privacy Policy which can be found on its website <http://www.skyfuel.com.au> and these terms and conditions.

**15. General**

15.1 If any provision of these terms and conditions is deemed to be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions of these terms and conditions will not be affected, prejudiced or impaired.

15.2 These terms and conditions and any contract to which they apply will be governed by the laws of New South Wales and are subject to the jurisdiction of the courts of New South Wales.

15.3 The Seller is be under no liability to the Buyer for any indirect loss and/or expense (including loss of profit) suffered by the Buyer arising out of a breach by the Seller of these terms and conditions.

15.4 In the event of any breach of this contract by the Seller the remedies of the Buyer will be limited to damages. Under no circumstances will the liability of the Seller exceed the Price of the Goods.

15.5 The Buyer will not be entitled to set off against or deduct from the Price any sums owed or claimed to be owed to the Buyer by the Seller.

15.6 The Seller may license or sub-contract all or any part of its rights and obligations without the Buyer's consent.

15.7 The Seller reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which the Seller notifies the Buyer of such change.

15.8 Neither party will be liable for any default due to any act of God, war, terrorism, strike, lock out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.

15.9 The failure by the Seller to enforce any provision of these terms and conditions will not be treated as a waiver of that provision, nor will it affect the Seller's right to subsequently enforce that provision.

**DISCLAIMER: any changes or updates to Skyfuel Australia Pty Limited's Terms & Conditions of trade will be posted on the website: [www.skyfuel.com.au](http://www.skyfuel.com.au)**