

Fuel Supply Terms

1. SUPPLY TERMS

1.1 These Terms apply to every supply of Fuel by Profusion Fuels.

2. BULK FUEL

2.1 Profusion Fuels may supply Fuel to your nominated site (Delivery Site).

2.2 Profusion Fuels is only obliged to supply Fuel against a Purchase Order that it has accepted. Purchase Orders must specify the Delivery Site and volume of Fuel required, which must not be less than the minimum volume of Fuel per delivery advised by Profusion Fuels from time to time at its discretion.

2.3 Profusion Fuels may accept or decline a Purchase Order, or accept only part of a Purchase Order, at its discretion. Profusion Fuels will use reasonable endeavours to advise you whether it has accepted a Purchase Order within 7 days of receipt. When Profusion Fuels accepts a Purchase Order, a separate contract forms between you and Profusion Fuels on these Terms.

2.4 All risk in the Fuel passes to you upon bulk delivery of the Fuel at the Delivery Site. Profusion Fuels delivery note is conclusive evidence of the volume of Fuel delivered unless you object in writing and provide Profusion Fuels reasonable grounds and supporting evidence for such objection within 72 hours of delivery.

2.5 It is your responsibility to provide safe access to the Delivery Site. 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.

3 GENERAL FUEL TERMS

3.1 Profusion Fuels retains property in all Fuel until it receives full payment.

3.2 Profusion Fuels is not liable for any failure to supply Fuel due to a lack of, unavailability of, or suspension of Profusion Fuels supplies.

3.3 You warrant that the Fuel will be used for commercial or business purposes only with a view to using or transforming it in the conduct of a business.

3.4 Where Profusion Fuels Supplies Aviation Fuel:

(a) you are solely responsible for all fuel testing; and

(b) you must comply with all Laws relating to the storage, transport and use of the Aviation Fuel.

3.5 Profusion Fuels warrants that the Fuel will comply with all Laws. To the extent permitted by law Profusion Fuels excludes all other warranties, representations and guarantees, including that the Fuel will have any particular component, quality or ability.

4 PAYMENT

4.1 It is your responsibility to pay Profusion Fuels:

(a) the Fuel price set by Profusion Fuels at its discretion from time to time and will be provided to you at your request.

(b) any expenses incurred by Profusion Fuels in enforcing its rights under these Terms, including solicitors' fees (on a full indemnity basis) and collection agents' fees;

(c) a fee of AUD\$20.00 for each dishonoured payment transaction

(d) interest in an amount notified by Profusion Fuels from time to time, being no more than 18% per annum, accrued daily and compounded monthly on all amounts not paid by the due date in accordance with these Terms; and

(e) all taxes, excise, levies and other government charges including GST payable in respect of any supply of Fuel or provision of credit.

(f) **Important:** If you pay with a debit or credit card, you may be charged a processing fee. You can avoid paying these fees by setting up a direct debit or direct credit.

(G) Applicable debit and credit card fees are as follows: VISA & MASTERCARD 2.2%

(h) American Express & Diners Card not accepted.

4.2 Fuel must be prepaid at the Price applying at the date of an order. However, if Profusion Fuels approves credit terms:

(a) the Price payable is the Price applying on the date the Fuel is delivered to you and

(b) the Price must be paid in accordance with the credit terms specified by Profusion Fuels, which Profusion Fuels may vary at its discretion by providing you with 7 days' written notice. If the credit terms are terminated for any reason all amounts owing will become immediately due and payable.

4.3 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.

4.4 Without limiting its rights at law or pursuant to these Terms, Profusion Fuels may suspend the supply of Fuel to you and require immediate payment of all moneys owed by you to Profusion Fuels if you are in breach of a material provision of these Terms or if any payment by you to Profusion Fuels is overdue.

4.5 If GST is imposed on any supply made by Profusion Fuels you must pay, in addition to any consideration payable by you for the supply, an additional amount calculated by multiplying the prevailing GST rate by the consideration for the relevant supply payable by you provided that Profusion Fuels issues a valid tax invoice to you within 7 days after the occurrence of the event that causes the GST liability of Profusion Fuels on any taxable supply to you to be attributed to a particular tax period.

4.6 Clause 4.5 does not apply if the consideration payable by you for the supply includes GST. However, all amounts are, unless otherwise indicated, expressed exclusive of GST.

4.7 If for any reason the amount recovered by Profusion Fuels under clause 4.5 differs from the amount of GST payable at law by Profusion Fuels in respect of the supply, the amount payable by you to Profusion Fuels will be adjusted accordingly upon Profusion Fuels delivering a valid adjustment note to you.

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) a party from seeking interlocutory or equitable relief from a court;
- (b) Profusion Fuels from taking any action it considers necessary, including debt recovery proceedings, to recover unpaid amounts; or
- (c) a party from exercising its rights under these Terms, including in the case of Profusion Fuels its rights under clause 4.4.

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 parties must comply with all relevant Laws at all times.

6.2 You must promptly notify Profusion Fuels of harm to any person, damage to any property, any Fuel spills and any loss, damage or malfunction of Profusion Fuels equipment.

6.3 You indemnify Profusion Fuels against and release Profusion Fuels from all and any loss or liability arising in connection with:

- (a) harm to any persons and loss or damage to any property caused by you or your personnel or contractors at any Site;
- (b) any loss, theft, spill, leak or escape of Fuel from any fuel storage facility on a Delivery Site.
- (c) your use, possession or storage of Fuel; and
- (d) your failure to fully comply with clauses 2.5 or 3.4; except to the extent that the loss or liability is caused by Profusion Fuels negligence.

6.4 Notwithstanding anything else, to the extent permitted by law neither party will be liable for any Consequential Loss.

6.5 Nothing in these Terms is intended to exclude, restrict or modify rights which you may have under any Law which may not be excluded, restricted or modified by agreement. If any Law implies a condition or warranty into these Terms in respect of the Fuel, and Profusions Fuels liability for breach of that condition or warranty may not be excluded but may be limited, Profusion Fuels liability for any breach of that condition or warranty is limited to Profusion Fuels (at its discretion):

- (a) resupplying the Fuel;
- (b) replacing the Fuel or supplying equivalent Fuel; or
- (c) paying the cost of replacing the Fuel or acquiring equivalent Fuel.

6.6 To the extent permitted by law, Profusion Fuels 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 you to Profusion Fuels in aggregate for the supply of Fuel.

7 RELATIONSHIP BETWEEN THE PARTIES

7.1 Profusion Fuels is as an independent contractor. Nothing in these Terms constitutes or will be deemed to constitute:

- (a) either party as being an agent of the other party for any purpose whatsoever; or
- (b) a partnership or joint venture between the parties; or

(c) 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 PERSONAL PROPERTY SECURITIES ACT

9.1 Terms used in this clause 9 have the meaning given to them in the Personal Property Securities Act 2009 (Cth) (PPSA).

9.2 The supply of Fuel prior to payment gives rise to a Purchase Money Security Interest. Profusion Fuels may register Security Interests on the Personal Property Securities Register. **9.3** For the purposes of the PPSA, you irrevocably and unconditionally waive your right to receive any notice from Profusion Fuels in connection with the registration or enforcement of a Security Interest granted or arising under these Terms.

10 GENERAL TERMS

10.1 These Terms supersede all prior representations, arrangements, understandings and agreements between the parties and represent the entire, complete and exclusive agreement between the parties relating to the supply of Fuel.

10.2 Terms and conditions set out in any Purchase Order are void and unenforceable, and any purported provisions to the contrary are excluded or extinguished.

10.3 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.

10.4 Profusion Fuels may vary these Terms from time to time by written notice. The varied Terms will become effective and apply to all new Purchase Orders 7 days after any such notice is forwarded to you at your last notified email address. No time, indulgence, representation, statement or communication will otherwise be effective to derogate from or override these Terms unless agreed by the parties in writing.

10.5 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.

11 DEFINITIONS AND INTERPRETATION

11.1 In these Terms, unless the context otherwise requires:

- (a) the singular includes the plural and vice versa;
- (b) a party includes its executors, administrators, liquidators, successors and permitted assigns; and
- (c) "includes" and similar words are not words of limitation.

11.2 In these Terms, unless the context otherwise requires:

Consequential Loss

means loss of profits, savings or revenue, loss of business opportunity, loss of reputation or goodwill, loss by reason of shut down or non-operation, increased costs of finance or loss of use or productivity (in each case whether direct or indirect) and any consequential, indirect, exemplary, special or punitive loss or damage of any kind, in each case whether caused by breach of contract, warranty, tort (including negligence), product liability, contribution or strict liability.

Fuel

means fuel or fuel additives; Law means legislation, ordinances, regulations, by-laws, local laws, orders, proclamations, governmental approvals (including consents, licences and permits), principles of law or equity, the Aviation Fuel Specifications, the Australian Standards and all rules and guidelines of the Civil Aviation Safety Authority, and a reference to any Law includes all subordinate Law made under it and any Law amending, consolidating or replacing it.