

By first using and then continuing to use the Fresh State LPG FOB, the Customer agrees that it is bound by these conditions as varied from time to time. These terms and conditions are integral to the contractual relationship between Fresh State and the Customer and between the Customer and the MMCS. The Customer must strictly observe all the terms and conditions of this Agreement which MMCS and Fresh State will strictly apply at all times and in all respects. Current terms and conditions of use can be obtained by contacting MMCS and requesting a printed copy. The following terms and conditions govern the use of the FOB issued to the Customer (Agreement):

## 1. DEFINITIONS

### 1.1. In this Agreement:

- 'Account' means the account opened for the Customer to which any Transaction made by the Customer or a FOB holder will be debited;
- 'FOB' means the Fresh State LPG FOB issued to the Customer for the purpose of purchasing and drawing Product from the Site. More than one FOB may be issued to a Customer.
- 'Customer' means the person or company in whose name the Account is maintained and includes employees, subcontractors or any other person acting on behalf of the Customer or with his authority;
- 'Deposit' means an amount paid by the Customer to MMCS to be held as security by MMCS for purchases of Product;
- 'Fresh State' means Fresh State Ltd and its successors;
- 'GST' means GST as that term that is defined in A New Tax System (Goods and Services Tax) 1999;
- 'MMCS' means FSL Nominees (Aust.) Pty Ltd ACN 159 237 724 of Melbourne Market, 35 Produce Drive, Epping;
- 'Notified Price' means the price of the Product notified to the Customer by Fresh State on a daily basis or on any other basis Fresh State sets as a result of market conditions. The Notified Price will be displayed GST inclusive;
- 'PIN Number' means Personal Identification Number;
- 'Rules' means the rules of MMCS which sets out the framework upon which MMCS provides services to buyers and sellers at Melbourne Market;
- 'Site' means the Liquefied Petroleum Gas outlet operated by Fresh State and located at Melbourne Market, 35 Produce Drive, Epping;
- 'Transaction' means a transaction in which a FOB is used by a Customer or a FOB holder to purchase Product from the Site.

## 2. RELATIONSHIP BETWEEN MMCS, FRESH STATE AND CUSTOMER

### 2.1. The Customer acknowledges and agrees as follows:

- 2.1.1. when drawing Product from the Site, the Customer enters into a contract with Fresh State for the sale and supply of the Product;
- 2.1.2. MMCS does not own, operate, manage the Site or the facilities at the Site and MMCS does not supply the Product to the Site;
- 2.1.3. MMCS provides credit/payment/collection services for buyers and sellers at Melbourne Market in accordance with its Rules;
- 2.1.4. Fresh State has requested MMCS to process Transactions and administer the credit/payment/collection services relating to the sale of Products;
- 2.1.5. MMCS will on behalf of Fresh State and at Fresh State's request:
  - a. record and process Transactions;
  - b. invoice the Customer for Product purchased;
  - c. collect payment from the Customer;
  - d. distribute moneys collected from the Customer in respect of Transactions to Fresh State;
  - e. undertake all relevant credit enquiries and process application for FOBs.
- 2.1.6. MMCS will provide the services referred to in paragraph (e) above to Customers who may be registered with MMCS as a 'buyer' or to Customers who are not registered as buyers with MMCS.
- 2.1.7. If the Customer is registered with MMCS as a buyer and has signed a Buyer's Agreement as defined in the Rules, then the terms and conditions of the Buyer's Agreement shall be deemed to be incorporated in these terms and conditions and MMCS will process Transactions for the Customer in accordance with the terms and conditions of the Buyer's Agreement and the Rules.
- 2.1.8. This Agreement authorises MMCS to administer Transactions and provide the services referred to in paragraph 2.1 (e) above for Fresh State.
- 2.1.9. This Agreement authorises the Customer to pay MMCS for Product purchased from Fresh State at the Site.

## 3. APPLICATIONS FOR FOBS

- 3.1. The acceptance of the application by either an existing or prospective Customer for either a new FOB, a renewal of a FOB or a replacement FOB, shall be at the sole and final discretion of Fresh State.
- 3.2. All risk of loss will pass to and be borne by the Customer from the date of dispatch of the FOB.
- 3.3. The Customer shall ensure that any person using a FOB shall not tamper with or try to alter or interfere with the fuel monitoring device or fuel delivery equipment at the Site.

#### 4. PRICE OF PRODUCT

- 4.1. The Customer is responsible for all transactions made on the Account.
- 4.2. The Customer agrees to pay MMCS for all Product purchased from the Site plus all taxes, expenses and charges debited to the Account by MMCS under these conditions.
- 4.3. All product is chargeable at the Notified Price plus all applicable Government or other taxes duties, levy charges, surcharges, assessments or impositions at the appropriate rate and any variation of the same at any time.

#### 5. PAYMENT

- 5.1. If the Customer is registered as a buyer with MMCS, the Customer will receive invoices in accordance with the Rules and the Customer must pay for the Product purchased from the Site plus all taxes, expenses and charges debited to the Account by the MMCS under these conditions.
- 5.2. If the Customer is not registered as a Buyer with MMCS, then, the Customer will be invoiced on a weekly basis. Payment must be made on or before the 14<sup>th</sup> day following the date of issue of the relevant invoice(s).
- 5.3. If payment is to be made by automatic debit from the Customer's nominated bank account then, in order to comply with the direct debit requirements, the Customer shall at all times:
  - 5.3.1. Maintain a bank account capable of accepting direct debits;
  - 5.3.2. Keep MMCS provided with an effective direct debiting mandate against such account;
  - 5.3.3. Ensure that every direct debit properly instanced by MMCS against such account is duly met.
- 5.4. MMCS may require a Deposit to permit the issue of FOB to the Customer or to ensure maintenance of the Customer's Account in credit.
- 5.5. When the Deposit falls below **\$50**, the Customer must top up the Deposit to the required amount.
- 5.6. If for any reason the Customer has not paid the full invoice value by the due date MMCS reserves the right to charge interest on the Account of the Customer at the rate of 3% above the rate prescribed by the Penalty Interest Rate Act (Vic) 1983 calculated on a daily basis and payable from the due date until the date full payment has been received.
- 5.7. Upon the Customer going into liquidation, whether compulsory or voluntary, or having a receiver or administrator or administrative receiver appointed over all or part of its property or business, the right to use the FOB shall automatically cease. If the Customer has paid a Deposit to MMCS any outstanding balance can be reclaimed from such Deposit by MMCS.
- 5.8. If a direct debit drawn by MMCS on the Customer's accounts is returned unpaid or a cheque sent by the Customer to MMCS is returned unpaid then the Customer shall pay MMCS an administration fee each time it occurs.

#### 6. DISPUTED TRANSACTIONS

- 6.1. The Customer may contact Fresh State to clarify details recorded on any tax invoice which the Customer receives.
- 6.2. When disputing any Account or Transaction, the Customer must provide Fresh State with the following details:
  - 6.2.1. FOB number;
  - 6.2.2. Date, time, place and amount of Transaction; an
  - 6.2.3. All the relevant information received on the Transaction.
- 6.3. Neither MMCS nor Fresh State is liable to a Customer (or any other person) if Fresh State is notified about a dispute more than 30 days after the Customer has received the relevant tax invoice.

#### 7. FOB USAGE

- 7.1. The FOB is for the Customer's use only and the Customer is responsible for the safe keeping of the FOB and the prevention of its unauthorised use.
- 7.2. To enter into a Transaction the Customer must present the FOB at the Site.
- 7.3. The FOB may only be used to obtain the Produce at the Site.
- 7.4. The FOB remains the property of Fresh State at all times.
- 7.5. On cancellation or termination of this Agreement, the Customer shall return all issued FOBs to Fresh State within 7 days by registered post.
- 7.6. The Customer shall be liable to pay Fresh State for all amounts due under the relevant Transaction, including where the Transaction is in respect of a vehicle other than that identified on the application form.

#### 8. ADDITIONAL FOB/FOB HOLDERS

- 8.1. Fresh State may issue a FOB to any FOB holder that the Customer nominates in writing as an agent of the Customer for the purpose of operating the Customer's Account. A FOB holder, in the case of a natural person, must be a least **18** years old.

#### 9. PIN NUMBERS

- 9.1. A 4-digit PIN Number will be allocated to each FOB.
- 9.2. PIN Numbers will be treated as confidential information and should at all times be kept entirely separate from the FOB. PIN Numbers must not be written on the FOB.
- 9.3. If a PIN Number is disclosed to an unauthorised person the Customer must immediately notify Fresh State.
- 9.4. The PIN Number is only for use at Product terminals within the Site.

## 10. LOST OR STOLEN FOBs

- 10.1. If a FOB is lost or stolen the Customer must immediately notify Fresh State by email, fax or registered post at such address Fresh State may specify from time to time.
- 10.2. The Customer will remain liable for all Transactions made with such lost or stolen FOB for a period expiring at the end of the second working day after the day on which notification is received in accordance with clause 11.1 save that no such release from responsibility will be given to the Customer if it can be established on the balance of probabilities that:
  - 10.2.1. The Customer gave the relevant FOB to an unauthorised person; or
  - 10.2.2. The loss of the FOB was due to the gross negligence of the Customer; or
  - 10.2.3. The Customer failed to adhere to a request made by Fresh State or its representative to destroy or return the FOB to Fresh State; or
  - 10.2.4. The Customer was in breach in any of the terms and conditions of this Agreement.
- 10.3. The Customer must co-operate with Fresh State and the police to help recover any FOB. If Fresh State suspects that a FOB is lost or stolen, then Fresh State may give the police any information which is relevant.
- 10.4. If any Customer recovers a FOB that has been reported as lost or stolen, it must be returned to Fresh State immediately.
- 10.5. **Charges** – Fresh State will charge a fee of \$30 to the Customer for the issue of a replacement FOB.

## 11. CANCELLATION

- 11.1. Fresh State may cancel any FOBs at any time without notice. No reason needs to be given for any cancellation.
- 11.2. If FOBs are cancelled, all amounts owing by the Customer to Fresh State in connection with the Customer's FOBs shall be paid to Fresh State within 10 days of any notification of cancellation and the Customer shall immediately destroy any cancelled FOBs.
- 11.3. Any amounts owing by the Customer in respect of the use of the Customer's FOB after it has been cancelled shall be invoiced to the Customer as soon as practicable after Fresh State becomes aware of those amounts and shall be paid by the Customer to Fresh State within 7 days of the date of that invoice.
- 11.4. The Customer shall be liable for any loss caused by unauthorised use of any FOB which has not been destroyed in accordance with clause 12.2.
- 11.5. The Customer shall indemnify and keep indemnified Fresh State and MMCS from any claims arising directly or indirectly from any failure by the Customer to destroy any FOB in accordance with sub clause 12.2.

## 12. CLOSING AN ACCOUNT

- 12.1. The Customer may close the Account by giving notice to Fresh State in writing and by returning all FOBs to Fresh State.
- 12.2. The Customer must pay immediately on demand the outstanding balance on the Account, including all charges, fees and costs to the date of repayment.
- 12.3. The Customer must ensure that there are no Transactions after the request to close the Account.
- 12.4. The Customer shall only cancel any direct debit mandate with Fresh State only where all outstanding payments have already been discharged.
- 12.5. It shall be the responsibility of the Customer to pay Fresh State for withdrawals of Produce made using any one of the customer's FOBs after the closing of the account.
- 12.6. The Account shall be closed only when all FOBs are returned to Fresh State and all liabilities under these terms and conditions are paid.

## 13. USE & RESALE OF PRODUCT

- 13.1. The Customer must not use Produce withdrawn against any FOB for any purpose other than for fuel in the Customer's own and contracted vehicles. Product must not be resold or otherwise disposed of to any other persons.
- 13.2. The Customer warrants to MMCS and Fresh State that it purchases LPG from the Site solely for use in a commercial and business operation.
- 13.3. While Fresh State will endeavour to supply Product to the Site no warranty can be given that Product will be available at Site.

## 14. INDEMNITY – HEALTH AND SAFETY

- 14.1. **Self-Serve Facility**  
The Customer acknowledges that the supply of the Product is from a self-serve facility and agrees that only those persons authorised by the Customer and who are trained in its use may operate the facility.
- 14.2. The Customer acknowledges that Fresh State does not train or provide training services for the operation of the facilities at the Site. All enquiries relating to the use and operation of the site must be directed to Fresh State.
- 14.3. **Approved Containers**  
The Customer agrees to fill only integral vehicle LPG tanks or LPG cylinder, in serviceable condition, which are fitted with automatic fill limiter valves and are attached to a vehicle.
- 14.4. **Safety**

The Customer, including the Customer's staff and agents, shall abide by and carry out all safety instructions and directions and shall exercise all reasonable FOB in the use of the facilities at the site. The Customer undertakes to advise Fresh State of any safety breach or improper use of the facilities by any person.

- 14.5. The Customer shall fully indemnify both MMCS and Fresh State and keep them fully indemnified against all liability including employer's liability in respect of any damage to property or installations at the Site, the property of Fresh State and/or MMCS or the Customer or the death or personal injury of their respective employees or agents arising out of or consequent upon the use of the FOB, the Site or the Product not being damage to property, death or personal injury caused by the negligence of either Fresh State or MMCS.
- 14.6. The Customer shall draw to the attention of any employees and agents or any person handling or using the Product on the Customer's behalf or having access to the Site, to any instructions, warnings or suggestions concerning the methods whereby, or the conditions whereupon, the Product should be used or handled.
- 14.7. The instructions, warning or suggestions are contained or referred in Fresh State's material safety data sheets or other literature relating to the Product.
- 14.8. The Customer must ensure compliance by any person using or handling the Product with the instructions, warnings or suggestions mentioned or referred to in this clause.
- 14.9. The Customer shall indemnify MMCS or Fresh State in respect of any loss or liability whatsoever or when so ever suffered or incurred by either of them by reason or any breach by the Customer of the foregoing, or by reason of any failure by the Customer himself to comply with the warnings, suggestions or instructions referred to in the previous clause.

## 15. FORCE MAJEURE

- 15.1. Any obligation to supply Product to the Customer shall be suspended if directly or indirectly by any cause or circumstances whatsoever reasonably outside Fresh State's control, Fresh State is prevented or hindered:
  - 15.1.1. From supplying the Customer with his requirements of Product; or
  - 15.1.2. From obtaining from its usual sources of supply all its requirements of Product.
- 15.2. Without prejudice to the generality of the previous Clause, the phrase "*circumstances reasonably outside Fresh State's control*" includes but is not limited to the following: -
  - 15.2.1. Industrial action;
  - 15.2.2. Termination of the agreement between Fresh State and its contracted supplier relating to the supply of Product at the site;
  - 15.2.3. Any action taken by Fresh State's own employees; and
  - 15.2.4. In the case of action by an authority (including the Melbourne Market Authority or any authority having jurisdiction over the site) compliance by Fresh State with any request or instruction of that Authority.
- 15.3. On the occurrence of any of the circumstances mentioned in 16.1 above Fresh State shall determine (and may from time to time re-determine) the extent (if any) to which supplies to the Customer are to be maintained whilst such circumstances continue, having regard to its ability to obtain process and to delivery supplies, the costs of doing so, the requirements of all its customers local needs and any other consideration it considers relevant.
- 15.4. As soon as practicable after the circumstances mentioned in 16.1 above cease Fresh State shall inform the Customer of the resumption of supplies.

## 16. LIABILITY OF MMCS AND FRESH STATE

- 16.1. MMCS and Fresh State accepts no liability and gives no warranty, express or implied, whether arising by common law or statute in relation to any Transaction by, or Product supplied to, the Customer by virtue of entering into this Agreement with the Customer.
- 16.2. Warranties Excluded

Subject to this Agreement, all warranties, representations, promises, conditions or statements regarding the Product, the equipment or dispensing facilities at the Site, whether express or implied including warranties or conditions as to the suitability or fitness of the Product, the equipment or dispensing facilities at the Site for any particular purpose, are expressly excluded to the fullest extent permitted by law.
- 16.3. Without limiting the generality of Clause 17.2, the Customer agrees neither MMCS or Fresh State will be liable to compensate the Customer for any loss of profits, loss of time in work schedules or any other loss, consequential or indirect loss or otherwise, that the Customer may suffer through the breakdown of or any accident to the equipment or dispensing facilities at the Site Equipment (from whatever cause) or for a failure (for whatever reason) on the part of an automatic dispensing pump to dispense Product at the site.

## 17. PRIVACY NOTICE AND AGREEMENT

- 17.1. Fresh State has collected and will collect personal information about the Customer and any FOB holder (in this clause "**you**"), as requested in the Customer's original application form ("**your information**") for the purposes of these conditions and any credit relationship with you. If Fresh State could not collect this information, it would be unable to deal with you in a credit relationship. Fresh State respects your privacy and will only use or disclose your information in accordance with the Privacy Act 1988.
- 17.2. The Customer can access your information (in accordance with the Privacy Act 1988. To request access, ask a privacy-related question or get a copy of our Privacy Policy Statement, please write to:



*The Manager, Privacy Department, Melbourne Markets Credit Service Pty Ltd, Store 36, 35 Produce Drive, Epping, VIC, 3076*

- 17.3. The Customer acknowledges that when it received the application for the Account that it has also received the MMCS Privacy Policy Statement.
- 17.4. The Customer gives permission to MMCS to carry out any credit or personal enquiries with respect to opening an Account.
- 17.5. If the Customer defaults in making a payment, then details of this Agreement and the conduct of an Account may be registered with a Licensed Credit Reporting Agency as defined by the Privacy Act (Cwth). Information thus registered may be used to help make credit decisions, or occasionally, for fraud prevention or the tracing of debtors.
- 17.6. MMCS reserves the right to share information contained within the Customer's application form, or any payment history following a period of trading, with third party organisations and your information may be disclosed to Fresh State's associated entities and to third party contracted to provide services to a Fresh State associate.

## **18. GST**

- 18.1. Subject as may otherwise be expressly stated in this Agreement, and subject to the provisions set out below, if any supply made under or in connection with these conditions by one party ('Supplier') to the other party ('Acquirer') is subject to GST, the payment for that supply will be inclusive of GST (if any).
- 18.2. The Acquirer will not be obliged to make a payment on account of GST under sub clause 19.1 until the Supplier has issued a tax invoice to the Acquirer for the supply to which the payment relates.
- 18.3. Words or expressions used, which are defined in A New Tax System (Goods and Services Tax) Act 1999, have the same meaning in this clause 19.

## **19. GENERAL**

- 19.1. Change of Address - the Customer shall immediately notify Fresh State of any change to the Customer's address.
- 19.2. Variation of these Terms – Fresh State may vary or add to the terms of this Agreement at any time provided that notice of such variation is served in writing. Any use of the FOB by the Customer after such notice has been served on the Customer shall be construed as acceptance by the Customer of such variation or addition.
- 19.3. Application Law - these conditions will be governed by the laws of Victoria and the Customer submits irrevocably to the jurisdiction of the courts of that State.
- 19.4. CCTV Security - the Customer acknowledges and accepts that the site is under constant video surveillance and they, their staff and agents will be recorded while using the Site. This surveillance is to provide a level of safety and security for users, to deter person from interfering or damaging the site and the installations at the Site and to provide a visual record in the event of an account query or unauthorised use.
- 19.5. Severability - where any provisions of this Agreement shall be prohibited by or adjudged by a Court to be unlawful, void or unenforceable, that provision shall to be extent required be removed from this Agreement and rendered ineffective as far as possible without modifying the remaining provisions of this Agreement and shall not, in any way, affect any other circumstances or the validity or enforcement of this Agreement.

## **20. NO WAIVER**

No waiver of any provision of this Agreement nor consent to any departure there from by the MMCS or Fresh State shall be effective unless it is in writing and signed by the MMCS, Fresh State or its respective authorised representative and then such waiver or consent shall be effective only in the specific instance and for the purpose for which it was given. No failure or delay on the part of the MMCS or Fresh State in exercising any rights, powers or privileges hereunder shall operate as a waiver thereof nor of any other right under this Agreement nor shall the single exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege by the MMCS or Fresh State. The failure of the MMCS or Fresh State at any time to insist on performance of any provision of this Agreement does not constitute a waiver of its rights at any later time to insist on performance of that or any other provision of this Agreement.