

WELLCAMP FUEL SERVICE TERMS AND CONDITIONS

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1. SUPPLY TERMS

These Terms apply to every supply of Fuel by Wellcamp Fuel Service Pty Ltd (A.B.N. 28153329214)(WFS).

2. BULK FUEL

- 2.1 WFS may supply Fuel to your nominated site (**Delivery Site**).
- 2.2 WFS 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 WFS from time to time at its discretion.
- 2.3 WFS may accept or decline a Purchase Order, or accept only part of a Purchase Order, at its discretion. WFS will use reasonable endeavours to advise you whether it has accepted a Purchase Order within 7 days of receipt. When WFS accepts a Purchase Order, a separate contract forms between you and WFS on these Terms.
- 2.4 All risk in the Fuel passes to you upon bulk delivery of the Fuel at the Delivery Site. WFS's delivery note is conclusive evidence of the volume of Fuel delivered unless you object in writing and provide WFS 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 WFS retains property in all Fuel until it receives full payment.
- 3.2 WFS is not liable for any failure to supply Fuel due to a lack of, unavailability of, or suspension of WFS's 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 WFS 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 WFS warrants that the Fuel will comply with all Laws. To the extent permitted by law WFS excludes all other warranties, representations and guarantees, including that the Fuel will have any particular component, quality or ability. WFS advises that Fuel at certain locations may contain up to 50ppm sulphur.

4. PAYMENT

- 4.1 It is your responsibility to pay WFS:
 - (a) the Fuel price set by WFS at its discretion from time to time and displayed on the WFS Customer Portal (**Price**);
 - (b) any expenses incurred by WFS 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 and AUD\$20.00 for each replacement or unreturned Tag;
- (d) interest in an amount notified by WFS 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.

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

- (a) the Price payable is the Price applying on the date the Fuel is delivered to you (whether by bulk delivery or at an WFS Site using a Tag); and
- (b) the Price must be paid in accordance with the credit terms specified by WFS, which WFS 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, WFS may suspend the supply of Fuel to you and require immediate payment of all moneys owed by you to WFS if you are in breach of a material provision of these Terms, if any payment by you to WFS is overdue or if WFS is unable to obtain credit insurance on usual terms with its usual insurer.

4.5 If GST is imposed on any supply made by WFS 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 WFS issues a valid tax invoice to you within 7 days after the occurrence of the event that causes the GST liability of WFS 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 WFS under clause 4.5 differs from the amount of GST payable at law by WFS in respect of the supply, the amount payable by you to WFS will be adjusted accordingly upon WFS 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) WFS 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 WFS 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 WFS of harm to any person, damage to any property, any Fuel spills and any loss, damage or malfunction of WFS's equipment or any Tag.
- 6.3 You indemnify WFS against and release WFS 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 or after it is dispensed at an WFS Site using a Tag;
 - (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 WFS's 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 WFS's liability for breach of that condition or warranty may not be excluded but may be limited, WFS's liability for any breach of that condition or warranty is limited to WFS (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, WFS 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 WFS in aggregate for the supply of Fuel.

7. RELATIONSHIP BETWEEN THE PARTIES

- 7.1 WFS 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. WFS 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 WFS 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 WFS 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 Queensland 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:

Aviation Fuel means Avgas or JetA1 fuel;

Aviation Fuel Specifications means DEF STAN 91-90, ASTM D910, or CAN CGSB 3.25 in relation to Avgas and the Aviation Fuel Quality Requirements for Jointly Operated Systems in relation to JetA1;

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; PIN means a personal identification number that enables the use of a Tag;

Purchase Order means any request for Fuel made by you to WFS sent by any medium and in any form;

Site means the Toowoomba Wellcamp Airport, and/or each Wellcamp Site and Delivery Site; and