



TERMS & CONDITIONS FOR THE SUPPLY OF FUEL AND SERVICES IN
RELATION TO SUCH SUPPLY

BETWEEN

**NT PORT AND MARINE PTY LTD
(ABN 33 146 391 219)
"NTPM"**

and

"CUSTOMER"

1. APPLICATION

- (a) These Terms and Conditions shall apply to the supply by NTPM to the Customer of Fuel and/or Services.
- (b) In the event of any conflict between these Terms and Conditions and any other terms and conditions of the Customer then these Terms and Conditions shall prevail.
- (c) By the execution of these Terms and Conditions the Customer acknowledges and agrees to the provisions of these Terms and Conditions and this Agreement.

2. DEFINITIONS & INTERPRETATION

- (a) In these Terms and Conditions the following words and phrases shall have the following meanings:

“Agreement” shall mean the agreement comprised in the Order and these Terms and Conditions;

“Customer” means the party identified as the Customer in the Order;

“Customer Price Advice” shall mean any Customer Price Advice provided by NTPM to the Customer or displayed on the NTPM Fuel Website;

“Depot” shall mean any place from which NTPM supplies Fuel through Dispensing Equipment;

“Dispensing Equipment” shall mean equipment used by NTPM to deliver the Fuel to the Tankers;

“Fuel” shall mean any Fuel whatsoever provided by NTPM to the Customer;

“NTPM” shall mean NT Port and Marine Pty Ltd;

“NTPM Fuel Website” shall mean the website of NTPM at www.ntportandmarine.com;

“Order” shall mean any order or request by the Customer for NTPM to provide Fuel and/or Services;

“Party” or “Parties” shall mean the parties to this Agreement and may be used interchangeably;

“Price” shall mean the price for Fuel and/or Services calculated as set out in Clause 5;

“Services” shall mean all services provided by NTPM to the Customer in relation to supply of Fuel;

“Sub-Contractor” shall include any person who pursuant to a contract or arrangement with any other person (whether or not NTPM) supplies or agrees to supply the Fuel and/or Services or any part thereof;

“Supplier Contract Prices” shall mean any prices for the fuel charged by the Supplier;

“Supplier Price Movements” shall mean any changes in the cost to NTPM of the Fuel as a result of changes in the price charged by any supplier;

“Suppliers” shall mean any person or entity supplying the Fuel to NTPM;

“Tankers” shall mean fuel tankers (which shall include the motorised vehicle and the fuel carrying tank or tanks) licensed to carry Fuel; and

“Terms and Conditions” shall mean these Terms and Conditions.

- (b) Words importing the singular include the plural and vice versa.
- (c) Words importing a gender include any gender.

- (d) An expression importing a natural person includes any company, partnership, joint venture, association, corporation or other body corporate and any Governmental authority or agency.
- (e) A reference to a statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations, ordinances or by-laws amending, consolidating or replacing it, and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued pursuant to that statute.
- (f) A reference to a Party includes that Party's executors, administrators, substitutes, successors and permitted assigns.
- (g) A covenant or agreement on the part of two or more persons binds them jointly and severally.

3. TERMS OF SUPPLY

The Fuel and/or Services supplied by NTPM to the Customer are supplied exclusively on these Terms and Conditions.

4. DELIVERY OF FUEL

- (a) All Fuel supplied by NTPM shall be delivered;
 - i. by NTPM using the Dispensing Equipment at the Depot; or
 - ii. by NTPM's Tanker Truck.
- (b) Fuel shall only be supplied to Tankers.
- (c) Unless otherwise agreed between the Parties and where applicable, Tankers to which Fuel is supplied shall not be permitted to leave the Depot at which such Fuel is supplied until the Price for the Fuel has been paid.

5. PRICE

In consideration of NTPM providing Fuel and/or Services to the Customer the Customer shall pay to NTPM the Price.

Unless otherwise agreed between NTPM and the Customer the Price for the Fuel and/or Services shall be:

- (a) either as shown in the latest Customer Price Advice as quoted or as displayed on the Dispensing Equipment.
- (b) in Australian Dollars per litre.
- (c) subject to an increase or reduction by reason of any change in Supplier Price Movements, Supplier Contract Prices and Customer Price Advices applicable as at the date of delivery of the Fuel and/or Services.
- (d) exclusive of Goods and Services Tax unless the display on the Dispensing Equipment includes goods and services tax.
- (e) inclusive of all duties and taxes.

6. TERMS OF PAYMENT

- (a) The Customer shall pay the Price set out on any invoice or statement for the Fuel and/or Services provided by NTPM plus any additional fees and charges set out on such invoice.
- (b) Unless otherwise agreed between the Parties the invoice with respect to the supply of Fuel and/or Services shall be paid immediately prior to the Fuel and/or Services being provided.

- (c) In the event that the Parties agree that the Tanker may leave the Depot prior to the invoice with respect to the Fuel and/or Services being paid then such invoice shall be paid within seven (7) days with respect to which time shall be of the essence.
- (d) In the event that the Customer fails to pay any invoice(s) in accordance with this Agreement then the Customer shall pay interest on any amount(s) outstanding at the rate of 6 per centum (6%) per annum on such outstanding sum(s).

7. GOODS & SERVICES TAX

- (a) In this Clause the following terms and expressions shall have the following meanings:

“Basic Consideration” means the Consideration to be paid or provided to the Provider for any Taxable Supply under this Agreement (other than GST payable pursuant to this Clause).

“Consideration” has the meaning which it bears in Section 195-1 of the GST Act.

“GST” shall mean the goods and services tax payable under the GST Act.

“GST Act” means the A New Tax System (Goods and Services Tax) Act, 1999 and any legislation substituted for, replacing or amending that Act.

“GST Law” has the meaning which it bears in Section 195-1 of the GST Act.

“Recipient” means any party who receives a Taxable Supply under this Agreement.

“Provider” means any person who provides a Taxable Supply under this Agreement.

“Taxable Supply” has the meaning which it bears in Section 195-1 of the GST Act.

“Tax Invoice” has the meaning which it bears in Section 195-1 of the GST Act.

- (b) Unless expressly stated in this Agreement the Consideration payable is exclusive of GST.
- (c) If GST is payable on the Basic Consideration or any part thereof or if the Provider is liable to pay GST in connection with any Taxable Supply provided to any Recipient under this Agreement, then:
 - (i) the Provider may increase the Basic Consideration or the relevant part thereof by an amount which is equal to the GST payable; and
 - (ii) the Recipient shall pay the increased Basic Consideration on the due date for payment by the Recipient of the Basic Consideration.
- (d) Where the Basic Consideration is to be increased to account for GST pursuant to Sub-Clause (c), the Provider shall, upon receipt of such amount, issue a Tax Invoice to the Recipient.

8. CESSATION/SUSPENSION OF SUPPLY OF FUEL AND/OR SERVICES

In the event that the Customer refuses and/or fails to pay to NTPM any monies due to NTPM then NTPM may immediately cease supplying the Fuel and/or carrying out the Services as the case may be without prejudice to any other rights whatsoever that NTPM may have against the Customer including the right to recover from the Customer all direct and indirect costs incurred by NTPM arising from such cessation of supplying the Fuel and/or carrying out the Services..

9. TANKERS

The Customer shall ensure that any Tanker receiving fuel is:

- (a) appropriately licensed in accordance with all applicable laws.
- (b) roadworthy, safe and fit to receive Fuel; and

- (c) Adequately sealed and leak proof.

The Customer shall indemnify, keep indemnified and hold harmless NTPM and its servants, agents and sub-contractors from and against all actions, suits, claims, demands, losses and damages whatsoever including consequential loss and damage and liabilities suffered or incurred by NTPM arising out of any breach by the Customer of this clause.

10. ACCURACY OF SPECIFICATIONS AND PARTICULARS NOTIFIED BY CUSTOMER

The Customer warrants the accuracy of all specifications and particulars in any way relating to the Fuel and/or Services submitted by it or its employees, servants or agents to NTPM and acknowledges that NTPM relies upon such information and the Customer shall indemnify, keep indemnified and hold harmless NTPM and its servants, agents and sub contractors from and against all actions, suits, claims, demands, losses and damages whatsoever including consequential loss and damage and liabilities suffered or incurred by NTPM arising out of any breach by the Customer of the warranty contained herein.

11. SPECIFICATIONS, GRADES AND QUANTITY OF FUEL

- (a) The specifications and grades of Fuel supplied by NTPM to the Customer shall be as set out in the invoice with respect to that Fuel or as otherwise notified by NTPM to the Customer.
- (b) Unless evidence to the contrary and to the satisfaction of NTPM is supplied by the Customer to NTPM within seven (7) days of delivery of Fuel such Fuel will be deemed to have complied with all applicable specifications and grades relevant to such Fuel and shall be deemed to be fuel of the type and characteristic ordered by the Customer.
- (c) Measurements of the quantity of Fuel supplied by NTPM to the Customer shall be accepted by the Customer as conclusive proof of the quantity of Fuel delivered and such measurements shall be deemed to have been correctly made.
- (d) Without in any way limiting any other provision of this Clause NTPM shall not be liable for any nonconformity of the Fuel with any relevant specification or grade where such

nonconformity arises from any act or omission of the Customer including, without limitation, nonconformity caused by or contributed to by storage or transport of the Fuel.

12. DATE FOR SUPPLY OF FUEL AND/OR SERVICES

- (a) NTPM shall use all reasonable endeavours to supply the Fuel and/or Services by any date(s) that NTPM has previously advised the Customer that such Fuel and/or Services will be provided but NTPM shall not be liable for any costs, loss or damage, including consequential loss or damage, suffered or incurred by the Customer if the Fuel and/or Services are not supplied by such date(s).
- (b) Any details of date(s) for the supply of the Fuel and/or Services which are provided by NTPM to the Customer shall be deemed to be estimates only and NTPM shall not under any circumstances be liable for any loss, damages, delay or consequential losses occasioned to the Customer arising out of or in any way relating to late or non-provision of the Fuel and/or Services.

13. HAZARDS

The Customer shall ensure that it informs NTPM in advance of any hazards which may exist in relation to any Tanker which is to receive Fuel and/or Services and in the event that the Customer fails to comply with the provisions of this Clause and NTPM becomes aware of any such hazards then NTPM shall be entitled to forthwith suspend the provision of the Fuel and/or Services to the Customer and the Customer shall be liable to reimburse NTPM all monies lost or expended by NTPM as a result of such suspension.

14. INFORMATION TO BE PROVIDED BY CUSTOMER

The Customer shall provide in advance to NTPM sufficient information, instructions and documents concerning the Fuel and/or Services to be supplied and the Tanker in which such Fuel is to be loaded and the Customer expressly warrants, represents and agrees with NTPM

that all information given by the Customer to NTPM shall be correct, complete and accurate and up to date.

15. DISRUPTIONS

Any date(s) by which Fuel and/or Services are to be provided shall be extended when any of the following events cause delay to the performance by NTPM in supplying the Fuel and/or Services:

- (a) acts of God;
- (b) any Government requisition, control, intervention, requirement or interference;
- (c) any circumstances arising out of war, threatened act of war or warlike operations, acts of terrorists or the consequences thereof;
- (d) riots, civil commotions, blockades or embargoes;
- (e) epidemics;
- (f) earthquakes, landslides, floods or other extraordinary weather conditions;
- (g) strikes, lockouts or other industrial action;
- (h) fire, accident, explosion (whether at any Depot or elsewhere);
- (i) failure of the Customer to provide to NTPM information within a reasonable time;
- (j) suspension of supply of the Fuel and/or Services pursuant to any other provision of this Agreement; and
- (k) any other breach by the Customer of any of the terms or conditions of this Agreement.

16. DELAY

The Customer hereby authorises any delay in the supply of the Fuel and/or Services which NTPM may in its absolute discretion deem desirable or necessary in the circumstances and in the event of such delay for whatsoever reason the date(s) for the supply of the Fuel and/or Services shall be extended accordingly and NTPM shall not be liable to the Customer for any loss or damage suffered by the Customer as a result of such delay.

17. RIGHT TO SUB-CONTRACT

- (a) NTPM and any Sub-Contractor shall be entitled to sub-contract on any terms the supply of the Fuel and/or Services.
- (b) The Customer undertakes that no claim or allegation shall be made, whether by the Customer or any other person whomsoever against any person (other than NTPM) by whom (whether as sub-contractor, principal, employer, servant, agent or otherwise) the Fuel and/or Services or any part thereof are supplied which imposes or attempts to impose upon such person any liability whatsoever whether or not arising out of negligence on the part of such person, and if such claim or allegation should nevertheless be made, then to indemnify, keep indemnified and hold harmless NTPM and the person against whom such claim or allegation is made against the consequences thereof. Without prejudice to the foregoing and for the purposes of this Clause NTPM is or shall be deemed to be acting as agent or trustee on behalf of and for the benefit of all such persons and each of them and all such persons and each of them shall to this extent be or be deemed to be parties to this Agreement.

18. EXTENSION OF EXEMPTIONS TO SUB-CONTRACTORS

Every exemption, limitation, condition and liberty herein contained and every right, exemption from liability, defence and immunity of whatsoever nature applicable to NTPM or to which NTPM is entitled hereunder shall also be available and shall extend to protect:

- (a) all Sub-Contractors;

- (b) every servant or agent of the NTPM or of a Sub-Contractor;
- (c) every other person (other than NTPM) by whom the Fuel and/or Services or any part thereof are supplied;
- (d) all persons who are or might be vicariously liable for the acts or omissions of any person falling within Sub-Clauses (a), (b) or (c) hereof and for the purposes of this Clause NTPM is or shall be deemed to be acting as agent or trustee on behalf of and for the benefit of all such persons and each of them and all such persons and each of them shall to this extent be or be deemed to be parties to this Agreement.

19. LIABILITY OF NTPM

The supply of the Fuel and/or Services and any Tanker into which such Fuel is loaded shall in all respects be at the risk of the Customer and not NTPM and NTPM and its servants and agents shall not be liable in tort or contract or bailment or otherwise howsoever for any loss or damage of any nature or kind whatsoever including consequential or economic loss and including loss of or damage to any property whatsoever and including personal injury to or the death of any person whomsoever including the Customer its servants, agents or contractors caused by contributed to or arising out or in the course of the provision of the Fuel and/or Services and whether or not such loss, damage, injury or death is due to the negligence or breach of contract or breach of duty as bailee on the part of NTPM or its servants, agents or Sub-Contractors and this Clause shall apply to all such loss or damage or injury or death whether or not the same occurs in the course of performance by or on behalf of NTPM of the Agreement or in events which are in the contemplation of NTPM and/or the Customer or in events which are foreseeable by them or either of them or in events which could constitute a breach of this Agreement or a breach of a fundamental term thereof.

20. METHODS

If the Customer expressly or impliedly instructs NTPM to use or it is expressly agreed that NTPM will use a particular method of supplying the Fuel and/or Services NTPM will give priority to

that method (provided that it is legal to do so) but if it cannot conveniently be adopted by NTPM or if such method involves costs which are unacceptable to NTPM the Customer hereby authorises NTPM to supply the Fuel and/or Services by such other method or methods as NTPM may determine in its absolute discretion.

21. TITLE

- (a) Until the Fuel and/or Services are paid for by the Customer in full, ownership in the Fuel shall remain with NTPM, but the risk in such Fuel shall pass to the Customer.
- (b) Until the Fuel and/or Services are paid for in full, the relationship between the Parties shall be fiduciary, and the Customer shall hold any Fuel supplied by NTPM to the Customer as bailee for NTPM.
- (c)
 - (i) The Customer is not without the prior express written consent of NTPM permitted to dispose of the Fuel until the Fuel and the Services have been paid for.
 - (ii) In the event that NTPM consents to the disposal of the Fuel, the monies resulting from the sale are to be specifically identified and placed into a separate account until payment in full for the Fuel and/or Services is made to NTPM.
- (d) NTPM may retake possession of and/or resell the Fuel if:
 - (i) the Customer repudiates this Agreement;
 - (ii) the Customer is in default under this Agreement;
 - (iii) payment of any amount owing or payable by the Customer to NTPM is not made when due under this Agreement;

- (iv) a receiver, receiver and manager, provisional manager, liquidator or administrator of the Customer is appointed.

- (e) For the purposes of enabling NTPM to retake possession of the Fuel the Customer irrevocably authorises NTPM to enter any land, vessel, Tanker or premises of the Customer and the Customer appoints NTPM as its agent to enter any land, vessel, Tanker and premises where the Fuel may be located from time to time and NTPM will not be liable to the Customer and the Customer indemnifies NTPM against any claim by any entity arising out of the removal of the Fuel by NTPM.

22. PERSONAL PROPERTY SECURITIES ACT, 2009 (CWTH)

- (a) In this Clause:
 - (i) “financing statement” shall have the meaning given to it by the PPSA;
 - (ii) “financing change statement” shall have the meaning given to it by the PPSA;
 - (iii) “PPSA” shall mean the Personal Property Securities Act, 2009 (Cwth);
 - (iv) “PPSR” shall mean the Personal Property Securities Register established under Section 147 of the PPSA;
 - (v) “security agreement” shall mean the security agreement under the PPSA created between the Customer and NTPM by this Agreement; and
 - (vi) “security interest” shall have the meaning given to it by the PPSA.

- (b) The Customer acknowledges and agrees that this Agreement.
 - (i) constitutes a security agreement for the purposes of the PPSA;

- (ii) creates a security interest in the Fuel and the Tanker to which the Fuel is delivered and NTPM may withhold delivery of the Fuel and/or Services to the Customer until all fees payable by the Customer to NTPM and any other claims that NTPM may have against the Customer have been satisfied in full.

(c) The Customer undertakes and agrees with NTPM to:

- (i) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) and otherwise do all such acts, matters and things (including preparing and signing all such papers, writings, applications and/or notices) which NTPM may reasonably require to:
 - A. register a financing statement or financing change statement in relation to a security interest on the PPSR;
 - B. register any other document required to be registered by the PPSA;
 - C. correct a defect in any financing statement or financing change statement; or
 - D. otherwise perfect its security interest herein.
- (ii) indemnify, and upon demand reimburse, NTPM for all expenses incurred by NTPM in registering a financing statement or financing change statement on the PPSR or releasing any Fuel and/or Tanker charged thereby;
- (iii) not register a financing change statement in respect of a security interest without the prior express written consent of NTPM;
- (iv) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Fuel in favour of a third party without the prior express written consent of NTPM.

- (d) NTPM and the Customer agree that Section 125 of the PPSA does not apply to the security agreement created by this Agreement.
- (e) The Customer hereby waives its rights to receive notices under Sections 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- (f) The Customer waives its rights as a grant and/or a debtor under Sections 142 and 143 off the PPSA.
- (g) Unless otherwise agreed to in writing by NTPM, the Customer waives its right to receive a verification statement in accordance with Section 157 of the PPSA.

23. LIEN

- (a) NTPM shall have a lien on the Fuel and on any Tanker to which the Fuel is delivered for any monies unpaid but due by the Customer to NTPM including any costs incurred by NTPM in recovering such monies and may enforce such lien as it may in its absolute discretion think fit.
- (b) Without in any way limiting the generality of Sub-Clause (a) hereof NTPM shall be entitled to sell the Fuel and any Tanker to which the Fuel is delivered by auction or by private treaty to cover the amount of any claims that NTPM may have against the Customer. The proceeds of such sale shall be used firstly to satisfy the costs of such sale, secondly to satisfy the claim or claims of NTPM against the Customer (including interest and costs) and the balance if any shall be paid to the Customer.

24. STORAGE

In the event that any Tanker to which any Fuel is supplied is not permitted to leave the Depot as a result of any non-compliance by the Customer with these Terms and Conditions the Customer shall upon demand being made by NTPM pay to NTPM all storage and other costs

incurred by NTPM as a result of such failure by the Customer and NTPM shall have a lien on the Fuel and the Tanker for all such costs.

25. CANCELLATION

No Order may be cancelled by the Customer except with the prior express written consent of NTPM and then only upon terms to be agreed by NTPM which provide for NTPM to be fully indemnified from and against all losses, costs, damages and expenses of whatsoever nature including consequential losses which may be suffered by NTPM.

26. EQUIPMENT, DAMAGE & CLEAN UP

- (a) In the event of any spillage of the Fuel and/or damage to any equipment, including the Dispensing Equipment the Customer shall give immediate notice to NTPM whether or not the spill and/or damage has been caused by or contributed to by the Customer or not.
- (b) The Customer shall be solely responsible for and shall indemnify, keep indemnified and hold harmless NTPM from and against all and any costs, losses, expenses or damages caused or incurred in connection with any Fuel spillages occurring whilst the Fuel is being supplied to the Customer.
- (c) The Customer acknowledges and agrees that the Customer has been notified of all relevant emergency contact numbers to be used in the case of an emergency as a result of a spillage or other accident whilst Fuel is being supplied to the Customer.
- (d) The Customer shall be liable for and shall indemnify, keep indemnified and hold harmless NTPM with respect to any loss, liability, damage or cost arising in connection with:
 - (i) any investigation, remediation or other action carried out by NTPM in respect of any contamination, pollution, spill or leakage of Fuel caused by or contributed to by the Customer;

- (ii) any notice issued by or action taken by any relevant statutory authority in relation to spillage or discharge of Fuel caused by or contributed to by the Customer;
- (iii) breach of any laws in relation to contamination, land management, protection of the environment or similar caused by any action or inaction taken by the Customer in relation to Fuel supplied by NTPM to the Customer;
- (iv) any claim for damages, compensation, loss, injury or death caused by or contributed to or arising out of or otherwise in respect of any contamination or pollution present in, over or under, emanating from or migrating to or from any Depot caused by or contributed to by the Customer;
- (v) breach of any obligation of NTPM to any third party caused by or contributed to by the Customer; and
- (vi) any claim for damages, compensation, loss, injury or death caused by or contributed to or arising out of any misuse by the Customer of the Dispensing Equipment or any damage to any Depot caused by or contributed to by the Customer.

27. LIABILITY FOR LOSS OR DAMAGE

- (a) Subject to the other provisions of this Agreement NTPM shall only be liable to the Customer under this Agreement when proven loss or damage has been caused by the wilful default of NTPM.
- (b) The liabilities of NTPM arising out of or in connection with this Agreement of whatsoever nature and howsoever arising shall cease upon completion of the supply of the Fuel and/or Services.

28. HEALTH, SAFETY & THE ENVIRONMENT

- (a) The Customer shall ensure that the Customer and its personnel and customers have and are familiar with any Material Safety Data Sheets (“MSDS”) applicable to the Fuel and any other information on health, safety and the environment which may from to time be provided by NTPM to the Customer.
- (b) The Customer shall ensure that the provisions of any MSDS or recommendations in any other information relating to the handling and utilisation of the Fuel are observed and NTPM shall not be liable for any failure on the part of the Customer to do so.
- (c) The Customer shall indemnify, keep indemnified and hold harmless NTPM from and against any action, claims or proceedings whatsoever arising from any default in the observance or performance by the Customer of the provisions of this Clause.
- (d) The Customer shall ensure that all employees, servants, agents or contractors of the Customer who accept delivery of the Fuel have successfully completed any induction programmes that may be provided by NTPM with respect to the Fuel.

29. SECURITY

As security for the performance by the Customer of all of its obligations to NTPM pursuant to this Agreement and prior to supply of the Fuel and/or Services the Customer shall if required by NTPM, deliver to NTPM such guarantee or guarantees as shall be acceptable to NTPM and containing terms and conditions acceptable to NTPM guaranteeing to NTPM the full performance of the obligations of the Customer under this Agreement.

30. TERMINATION

- (a) NTPM shall be entitled to terminate this Agreement by notice in writing to the Customer if:
 - (i) the Customer is deemed insolvent;

- (ii) without lawful excuse, the Customer fails to pay any sums due under this Agreement at the time stipulated under this Agreement; or
- (iii) the Customer indicates its intention not to perform this Agreement.

PROVIDED ALWAYS that NTPM shall be entitled to recover from the Customer any monies unpaid by the Customer with respect to Fuel and/or Services or otherwise payable under this Agreement as at the date of termination, together with any losses that NTPM may suffer, or incur, by reason of the termination.

- (b) The Customer shall be deemed insolvent if it makes any voluntary arrangement with its creditors or becomes subject to an administration order or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction) or an encumbrancer takes possession of, or a receiver is appointed in respect of any of the Customer's property or assets or NTPM reasonably apprehends that any of the events referred to herein is about to occur in relation to the Customer and, after notification to the Customer, is not reasonably satisfied as to its continuing creditworthiness and/or is not provided with suitable guarantees.

31. INSURANCE

The Customer shall effect and maintain at no cost to NTPM insurance providing for full recovery for such loss and damage for which the Customer may be held liable to NTPM under this Agreement and shall if requested by NTPM make available immediately to NTPM copies of all policies relating to such insurance.

32. ASSIGNMENT

NTPM shall be entitled to assign this Agreement or any payment, right, title, interest or other benefit in or under this Agreement at any time and shall provide notice of such assignment to the Customer and the Customer waives any right that it may have to object to any such assignment.

33. CONDITIONS TO HAVE FULL FORCE IN ALL CIRCUMSTANCES

All the rights, immunities and limitations of liability in this Agreement shall continue to have full force and effect in all circumstances and notwithstanding any breach of this Agreement or any of the conditions thereof by NTPM or any other person entitled to the benefit of such provisions.

34. VALIDITY OF TERMS & SEVERABILITY

In the event that any of the terms, conditions or provisions contained in this Agreement shall be determined invalid, unlawful or unenforceable to any extent, such term, condition or provision shall be severed from the remaining terms, conditions and provisions which shall continue to be valid to the fullest extent permitted by law.

35. FORCE MAJEURE

NTPM shall not be liable for default or failure in performance of its obligations pursuant to this Agreement resulting directly or indirectly from acts of God, civil or military authority, acts of public enemy, war, accidents, fire, explosions, earthquakes, floods, the elements, strikes, labour shortages, shortage of suitable parts, components, materials including chemicals, labour or transportation or any other cause beyond the reasonable control of NTPM.

36. AUSTRALIAN CONSUMER LAW

- (a) In this clause “goods” shall mean Fuel.

- (b) Notwithstanding anything herein contained NTPM shall continue to be subject to any implied conditions and warranties or guarantees provided by the Australian Consumer Law pursuant to the Competition & Consumer Act, 2010 (Cwth) (as amended) (“the Australian Consumer Law”) or the Australian Consumer Law (WA) pursuant to the Fair Trading Act, 2010 (WA) (as amended) (“the Australian Consumer Law (WA)”) if and to the extent that the Australian Consumer Law or the Australian Consumer Law (WA) is or are applicable to the supply of goods and/or Services by NTPM to the Customer and

prevents the exclusion, restriction or modification of any such condition or warranty or guarantee.

- (c) Save for other conditions and warranties or guarantees (if any) set out in this Agreement the only conditions and warranties or guarantees which are binding on NTPM in relation to its supply of any goods and/or Services are those required by the Australian Consumer Law (if applicable) and the Australian Consumer Law (WA) (if applicable) and in the event that NTPM is liable for breach of a condition or warranty or guarantee implied by the Australian Consumer Law or the Australian Consumer Law (WA) the liability of NTPM for a breach of such condition or warranty or guarantee shall be limited:

(i) in the case of goods to:

- A. the replacement of the goods or the supply of equivalent goods;
- B. the repair of the goods;
- C. the payment of the cost of replacing the goods or of acquiring equivalent goods;
- D. the payment of the cost of having the goods repaired,

(ii) in the case of Services to:

- A. the supplying of the Services again; or
- B. the payment of the cost of having the Services supplied again,

and otherwise all conditions and warranties and guarantees whether express or implied by law and all representations, statements and obligations which would otherwise be binding upon NTPM are hereby expressly excluded and negated.

37. LIMITATION OF LIABILITY

Subject to the other provisions of this Agreement the liability of NTPM to the Customer shall be limited to the Price for the Fuel and/or Services.

38. NOTICES

If either Party shall desire to give to or serve on the other Party any notice, claim or demand hereunder or in connection herewith then such notice, claim or demand shall be sufficiently given if forwarded by registered post or facsimile transmission to such Party at his address stated herein or last known to the Party desiring to give such notice or in the case of any Party being a company to its registered office. Every notice shall be deemed to have been received and given at the time when in the ordinary course of post or transmission it should have been delivered or received at the address to which it was sent PROVIDED THAT if the day on which such notice or other communication as aforesaid is by this Clause deemed to have been received falls on a Saturday, Sunday or day which is a public holiday in the intended place of service or receipt, then the notice or other communication aforesaid shall be deemed to have been received on the day next following which is not a Saturday, Sunday or public holiday as aforesaid irrespective of whether or not such notice or other communication has been accepted by the addressee thereof.

39. WAIVER

No waiver of any provision of this Agreement nor consent to any departure therefrom by any of the Parties shall be effective unless the same shall be in writing and then such waiver or consent shall be effective only in the specific instance and for the purpose for which it is given. No default or delay on the part of any of the Parties in exercising any rights powers or privileges hereunder shall operate as a waiver thereof or of any other right hereunder; nor shall a single or partial exercise thereof preclude any other or further exercise of any other right, power or privilege.

40. GOVERNING LAW & JURISDICTION

This Agreement shall be governed by and construed in accordance with the laws for the time being of the State of Western Australia and the Parties hereby submit to the jurisdiction of the Courts of that State and the Federal Court of Australia and all Courts which are competent to hear appeals therefrom.

41. VARIATIONS

No modification, variation or amendment of this Agreement shall be of any force or effect unless it is in writing and signed by all Parties.

These Terms and Conditions are acknowledged and agreed by the Customer

Date

Signature

Print name of Signatory and
position in the Customer

Print full name of Customer

Print full address and contact

Details of Customer (including fax, e-mail and telephone details and name of contact person at
office of Customer)