Riordan | Fuel

Fuel Supply & Equipment Loan Agreement Terms & Conditions

These terms and conditions apply, and are incorporated into, all Fuel Supply and Equipment Loan Agreements

1. Defined terms

In this Agreement, unless the context requires otherwise, defined as follows:

Account Application means a credit application provided by Riordan Fuels which the Customer must complete to make an application to Riordan Fuels for the supply of Petroleum Products and loan of the Equipment.

ACL means the Australian Consumer Law which is contained in Schedule 2 of the Competition and Consumer Law Act 2010 (Cth).

Business Day means a day which is not a Saturday, Sunday or public holiday in the location of the Lessor's address set out in this Agreement.

Change of Control means a change in:

(a) control of the composition of the board of directors of a corporation;

(b) control of more than half the voting rights attaching to shares in a corporation;

(c) control of more than half the issued shares of a corporation (excluding any share which carries no right to participate beyond a specified amount in the distribution of either profit or capital); or

(d) control as defined in the Corporations Act 2001 (Cth).

Claim means any actual, contingent, present or future claim, demand, action, suit or proceeding for any Liability, restitution, equitable compensation, account, injunctive relief, specific performance or any other remedy of whatever nature and however arising, whether direct or indirect, and whether in contract, tort (including but not limited to negligence) or otherwise.

Commencement Date means the date set out in Item 4.

Direct Debit Service Agreement means the agreement regarding the direct debit method of payment set out in the Account Application and includes the direct debit request set out in the Account Application.

Due Date means the date, as agreed between the Customer and Riordan Fuels, by or on which the amount of the tax invoice must be paid in full, or, if no date has been agreed, the 14th day of the month following the month in which purchases have been made.

Equipment means the equipment set out in Item 3.

Fuel means the petroleum products which are permitted to be stored in the Equipment.

Guarantor means the person(s) named in Item 2.

Insolvency Event means any of the following events or any analogous event:

- **(a)** the Lessee disposes of the whole or any part of the Lessee's assets, operations or business other than in the ordinary course of business;
- **(b)** the Lessee ceases, or threatens to cease, carrying on business;
- **(c)** the Lessee is unable to pay the Lessee's debts as the debts fall due;
- **(d)** any step is taken by a mortgagee to take possession or dispose of the whole or any part of the Lessee's assets, operations or business;
- **(e)** any step is taken for the Lessee to enter into any arrangement or compromise with, or assignment for the benefit of, the Lessee's creditors or any class of the Lessee's creditors; or
- **(f)** any step is taken to appoint an administrator, receiver, receiver and manager, trustee, provisional liquidator or liquidator of the whole or any part of the Lessee's assets, operations or business.

Item means an item in the Reference Table.

Liability means any loss, liability, cost, payment, damages, debt or expense (including but not limited to reasonable legal fees).

Liquidated Damages means the amount set out in Item 9.

Material Adverse Effect means a material adverse effect in the opinion of the Lessor on:

- **(a)** the Equipment;
- **(b)** the Lessee's business, property of financial condition;
- **(c)** the Lessee's ability to perform the Lessee's obligations under this Agreement;
- **(d)** the attachment, perfection or priority of any Security Interest under this Agreement; or
- **(e)** the validity or enforceability of this Agreement or the rights of the Lessor under this Agreement.

Minimum Yearly Quantity means the minimum quantity of Petroleum Products by quantity or volume purchased by the Customer in each financial year during the Term, as set out in Item 8. For any period less than a full financial year, the Minimum Yearly Quantity shall be reduced accordingly on a pro-rata basis.

Permitted Purpose means use of the Equipment in connection to the business operated from the Premises by the Customer.

Personnel means any employee, servant, contractor, subcontractor, agent, partner, director or officer of a party.

Petroleum Products means the products set out in Item 7.

PPS Security Interest means a security interest that is subject to the PPSA.

PPSA means the Personal Property Securities Act 2009 (Cth).

Premises means the premises set out in Item 6.

Reference Table means the Reference Table set out in the Fuel Supply and Equipment Agreement to which these terms and conditions relate.

Right of Entry Deed means a deed permitting Riordan Fuels to access the Premises in the form required by Riordan Fuels from time to time

Security Interest means:

(a) a PPS Security Interest;

(b) any other mortgage, pledge, lien or charge; or

(c) any other interest or arrangement of any kind that in substance secures the payment of money or the performance of an obligation, or that gives a creditor priority over unsecured creditors in relation to any property.

Specification means any environmental, operation, safety and management requirements in relation to the Premises that are necessary for the installation and use of the Equipment.

Taxes means any present or future tax, fee, levy, duty, charge, withholding, penalty, fine, impost or interest imposed by any Authority including but not limited to any tax in relation to sales, use, property, value added, goods and services, turnover, stamp duty, interest equalization, business, occupation, excise, income, profits or receipts.

Term means the term set out in Item 5.

Transaction means a purchase transaction of Petroleum Products by the Customer from the Equipment.

2. Conditions precedent

(a) This agreement is conditional upon:

- **(i)** the Customer completing and returning an Account Application and Direct Debit Service Agreement to Riordan Fuels, and Riordan Fuel's acceptance of such Account Application and Direct Debit Service Agreement (in Riordan Fuel's sole discretion); and
- **(ii)** if the Customer is not the registered proprietor of the Premises, the registered proprietor of the Premises and the Customer entering into a Right of Entry Deed.

(b) Until each condition in clause 2(a) is satisfied, Riordan Fuels shall have no obligation to deliver or make available any Equipment for loan or supply any Petroleum Products.

3. Term

(a) This agreement will commence on the Commencement Date and will continue for the Term unless terminated earlier in accordance with the terms of this agreement.

(b) If the Customer continues to use the Equipment after the expiration of the Term with the Riordan Fuel's approval, the Customer does so on an overholding basis:

- **(i)** which either party may terminate on 30 days written notice to the other party; and
- **(ii)** on the same terms as this agreement except for those changes necessary to make this agreement terminable on 30 days written notice

4. Supply and delivery of Equipment and Petroleum Products

(a) The Customer requests Riordan Fuels, and Riordan Fuels agrees, to loan the Equipment to the Customer on the terms set out in this agreement.

(b) The Customer agrees to purchase from Riordan Fuels, and Riordan Fuels agrees to sell the Customer, Petroleum

(c) Products from the Equipment on the terms and conditions set out in this agreement.

(d) In consideration of Riordan Fuels loaning the Equipment to the Customer, the Customer must purchase and take delivery from the Equipment of not less than the Minimum Yearly Quantity.

(e) Riordan Fuels agrees to use commercially reasonable endeavours to ensure that the Equipment contains such volume of Petroleum Products reasonably required by the Customer from time to time.

5. Installation

(a) The Equipment will be installed by Riordan Fuels, or its agents, at Riordan Fuels' expense, at the Premises as soon as practicable after the conditions set out in clause 2(a) are satisfied.

(b) The Customer must, at its cost, prepare and maintain the Premises:

- **(i)** to enable installation of the Equipment; and
- **(ii)** in accordance with any Specification that is agreed between the parties in writing

6. Use

(a) The Customer must:

- **(i)** only store Petroleum Products in the Equipment which has been provided by Riordan Fuels;
- **(ii)** only use the Equipment for the Permitted Purpose and for the purpose which the Equipment was designed;
- **(iii)** comply with all manufacturer instructions and recommendations relating to the Equipment; and
- **(iv)** at all times store and use the Equipment only at the Premises.

(b) The Customer must not:

- **(i)** use the Equipment to sell Petroleum Products to any third party;
- **(ii)** alter the Equipment, make any addition to the Equipment or install anything in or on Equipment;
- **(iii)** alter or cover up any identifying number or mark on the Equipment or any identifying plate affixed by the Riordan Fuels; or
- **(iv)** do anything that could prejudice the Riordan Fuel's interest in the Equipment.

(c) If the Equipment breaks down or becomes unsafe to operate, the Customer must:

- **(i)** immediately notify Riordan Fuels;
- **(ii)** stop using the Equipment and ensure it does not sustain any further damage;
- **(iii)** prevent the Equipment from causing injury or damage to any person or property; and
- **(iv)** not repair or attempt to repair the Equipment without Riordan Fuel's prior written consent.

(d) Riordan Fuels will use reasonable endeavours to repair or replace the Equipment at Riordan Fuels discretion as soon as reasonably practicable after receiving notice under clause 6(c)(i). If the Equipment has broken down or become unsafe to use as a result of the Customer's negligence or breach of the agreement, the Customer will be liable for the costs associated with the repair or replacement of the Equipment and for any other charges payable by the Customer under this agreement for the period during which the Equipment is being repaired or replaced.

(e) The Customer must only use persons approved by Riordan Fuels to repair and maintain the Equipment.

(f) The Customer acknowledges the Customer will use the Equipment at the Customer's sole risk

7. Access & Inspection

(g) The Customer grants to Riordan Fuels the right to enter any premises (including the Premises) where the Equipment is located with any employees, consultants or agents for the purpose of:

- **(i)** inspecting or examining the Equipment;
- **(ii)** carrying our repairs and maintenance which are not the responsibility of the Customer;
- **(iii)** carrying out tests on and in relation to the Equipment; and
- **(iv)** auditing the Customer's compliance with the terms of this agreement.

(h) Riordan Fuels may exercise Riordan Fuel's right under this clause 7 at all reasonable times on providing the Customer 24 hours notice (except in case of emergency in which case no notice is required)

8. Safety & Compliance

(a) The Customer acknowledges that the Customer has control of the Equipment and will be responsible for occupational health and safety of all persons who use, repair, maintain or interact with the Equipment during the Term and otherwise while in possession of the Equipment.

(b) The Customer warrants that the Customer has inspected the Equipment, undertaken a risk assessment in relation to the Equipment, and understands the hazards and risks associated with the Equipment.

(c) The Customer will comply with all reasonable requirements and instructions of the manufacturer or supplier of the Equipment.

9. Return of Equipment

(a) At the end of this agreement for any reason, Riordan Fuels will collect, at its cost, the Equipment and any Petroleum Products contained within the Equipment.

(b) The Customer irrevocably appoints and authorises Riordan Fuels and its Personnel to enter on the Premises or any land or premises upon which the Equipment is situated to take possession of the Equipment.

(c) Prior to collection by Riordan Fuels, the Customer must ensure that the Equipment is clean, undamaged and in an unaltered condition, fair wear and tear accepted.

(d) Upon the return of the Equipment to Riordan Fuels' premises, an inspection of the Equipment will be conducted by Riordan Fuels to ascertain and record the condition of the Equipment at the end of this agreement (Post Loan Inspection).

(e) The Customer acknowledges and agrees that Riordan Fuel's record of the Post Loan Inspection is sufficient evidence of the condition of the Equipment at the end of this agreement unless it is proved to be false.

(f) The Customer acknowledges and agrees that the costs of repairing any damage to the Equipment occurring during the Term (whether identified during or subsequent to the Post Loan Inspection) and cleaning the Equipment will be borne by Customer and must be paid by the Customer to Riordan Fuels within 7 days after the Customer receives a tax invoice from Riordan Fuels for those costs

10. Price, invoicing and payment

(a) The Customer must pay the prices for the Petroleum Products set out Item 10.

(b) Riordan Fuels will issue a tax invoice to the Customer for all purchases made from the Equipment during the previous billing period and all fees, charges and moneys otherwise due and payable to Riordan Fuels. The Customer must pay the full amount of the tax invoice by the Due Date without deduction or setoff.

(c) Payment will be effected by direct debit from the Customer's nominated bank account (unless a different payment method is agreed in advance in writing) in accordance with the Direct Debit Service Agreement.

(d) If the Due Date falls on a non-business day, the payment must be made on the first business day after the Due Date if the payment is effected by direct debit and on the business day preceding the Due Date if the payment is effected by any other payment method.

(e) Payment is made on the date when Riordan Fuels receives cleared funds into its nominated bank account. The Customer is in default if full payment of the tax invoice is not made by or on the Due Date or if the payment subsequently dishonours.

(f) If the Customer is in default, in addition to any other right Riordan Fuels may have, Riordan Fuels may immediately and without prior notice, at its discretion do any one or more of the following:

- **(i)** charge the Customer interest on the overdue amount at a rate of 12% per annum from the Due Date until Riordan Fuels receives the payment in full;
- **(ii)** suspend the provision credit to the Customer until the payment is made in full;
- **(iii)** review and adjust the Customer's credit limit; and
- **(iv)** terminate the provision of the credit account.

(g) If the Customer is in default, the Customer will be liable to Riordan Fuels for the following:

- **(i)** the unpaid amount;
- **(ii)** any new amount in respect of any purchases and/or fees incurred on the Customer's account after the date of the latest tax invoice issued to the Customer;
- **(iii)** any interest on the unpaid amount and any new amount charged to the Customer under clause 9(f)(i);
- **(iv)** if direct debit or other payment method is dishonoured, the dishonour fee; and
- **(v)** all costs and expenses, including full legal and administrative costs incurred by Riordan Fuels in attempting to enforce payment or otherwise incurred as a result of the default.

All such amounts are debts incurred by the Customer to Riordan Fuels and must be paid within 3 Business Days after the receipt of a tax invoice from Riordan Fuels. However, the Customer agrees that if a tax invoice has previously been issued for any amount (such as an invoice for the unpaid amount), such invoice does not need to be reissued under this clause and that amount becomes immediately due and payable on the date of default

11. Title

Title to:

(a) the Equipment and the Petroleum Products within the Equipment will remain with Riordan Fuels at all times even if the Equipment is in the possession of the Customer or attached to any land or buildings; and

(b) the Petroleum Products which are subject to a Transaction will remain with Riordan Fuels and does not pass to the Customer until any and all sums due by the Customer to Riordan Fuels on any account whatsoever are paid in full

12. Insurance

(a) During the Term and otherwise while in possession of the Equipment, the Customer must maintain insurance with a reputable insurer for:

- **(i)** public liability for at least $20 million in respect of any one claim and unlimited in the aggregate; and
- **(ii)** any other insurance required by law or reasonably required by the Riordan Fuels.

(b) For the insurance required under this agreement, the Customer must:

- **(i)** deliver certificates of currency from the insurers to Riordan Fuels before the Commencement Date and then as reasonably required by the Riordan Fuels;
- **(ii)** immediately apply any proceeds received under a policy to reinstate, replace or restore the loss or damage to the Equipment or Petroleum Products within the Equipment or any item required to be insured under this clause 12 and if the proceeds are insufficient or unavailable for that purpose, pay the balance required out of the Customer's money.

(c) The Customer will not do anything which may provide grounds for an insurer to refuse payment of a claim, or may prejudice Riordan Fuel's interests, under any insurance policy which the Customer is required to maintain under this clause 12.

(d) If the Customer does not comply with the Customer's obligations under this clause 12, Riordan Fuels may (but is not obliged to) effect the relevant insurance policy and recover the cost of doing so from the Customer.

13. Warranties

(a) The Customer represents and warrants to Riordan Fuels that:

(i) the Customer has read, understood and accepted the terms set out in the Account Application and Direct Debit Service Agreement even if the Customer may not have executed the Account Application and/or Direct Debit Service Agreement;

(ii) the Customer and each member of the Customer's Personnel has the requisite skill, ability, expertise, experience, training and resources to perform the Customer's obligations under this agreement;

(iii) the Customer has the right, power, authority and entitlement to execute this agreement and perform the Customer's obligations under this agreement;

(iv) the Customer is not subject to any actual, threatened or pending investigation, action, suit or proceedings by or before any authority or which could have a Material Adverse Effect;

(v) any information provided by the Customer to Riordan Fuels prior to the execution of this agreement was, and remains at the date of the execution of this agreement, true and correct;

(vi) the Customer is familiar with the risks associated with the Equipment;

(vii) the Equipment and Petroleum Products are used by the Customer wholly or predominately for business purposes and not wholly or predominately for personal or domestic purposes; and

(viii) the Customer will provide immediate written notice to Riordan Fuels if the Customer becomes aware that a representation or warranty given by the Customer under this clause 13(a) has become untrue or misleading.

(b) The Customer warrants that the Customer has not relied and will not rely on Riordan Fuel's skill or judgment or on any financial or other advice, representation, statement or promise provided or made by or on behalf of the Riordan Fuels in deciding to enter into this agreement

14. Liability and indemnity

(a) The Customer must indemnify and hold harmless Riordan Fuels and each member of the Riordan Fuel's Personnel (collectively, ***those indemnified***), from and against any Liability or Claim (including legal costs on a solicitor and own client basis) that those indemnified may sustain or incur, directly or indirectly, as a result of or in connection with:

(i) any act or omission of the Customer, or the Customer's Personnel;

(ii) any breach of this agreement by the Customer;

(iii) any loss or theft of, or damage beyond fair wear and tear to, the Equipment; or

(iv) the use of the Equipment by the Customer, the Customer's Personnel or any third party (including but not limited to personal injury, sickness or death).

(b) The Customer releases Riordan Fuels to the full extent permitted by law from any Liability or Claim arising from this agreement.

(c) Riordan Fuels holds the benefit of this indemnity on trust for each of those indemnified under this clause 14.

(d) Clauses 14 and 15 continue in force and effect despite termination or expiry of this agreement.

15. Exclusion of Warranties and Liabilities

(a) Subject to clause 15(c), and except as expressly provided to the contrary in this agreement, all guarantees, terms, conditions, warranties, undertakings, inducements or representations whether express or implied, statutory or otherwise, relating to this agreement or its subject matter are excluded to the maximum extent permitted by law.

(b) Nothing in this agreement excludes, restricts or modifies any right or remedy, or any guarantee, term, condition, warranty, undertaking, inducement or representation, implied or imposed by any legislation which cannot lawfully be excluded or limited. This may include the guarantees relating to the supply of goods and services contained in the ACL.

(c) Where Riordan Fuels is not able to exclude a guarantee, term, condition, warranty, undertaking, inducement or representation imposed by legislation in relation to this agreement (**Non-Excludable Provision**), and Riordan Fuels is able to limit the Customer's remedy for a breach of the Non-Excludable Provision, then the Riordan Fuel's liability for breach of the Non-Excludable Provision is limited to (at Riordan Fuels sole discretion):

(i) in the case of services, the cost of supplying the services again or payment of the cost of having the services supplied again; and

(ii) in the case of goods, the cost of replacing the good, supplying equivalent goods or having the goods repaired, or payment of the cost of replacing the goods, supplying equivalent goods or having the goods repaired.

(d) Subject to Riordan Fuel's obligations under the Non Excludable Provisions and to the maximum extent permitted by law, Riordan Fuel's maximum aggregate liability for all claims under or relating to this agreement or its subject matter, whether in contract, tort (including without limitation negligence), in equity, under statute, under an indemnity, is limited to an amount equal to the fees paid by the Customer under this agreement.

(e) Notwithstanding any other provision of this agreement and to the fullest extent permitted by law, in no circumstances will either party be liable to the other party for any consequential, indirect or special losses or damages of any kind (including, without limitation, loss of profit, loss of revenue, loss or corruption of data, business interruption or indirect costs).

16. Termination

(a) If the Customer is in breach of this agreement, Riordan Fuels may provide a written notice to the Customer specifying the breach and requiring the Customer to remedy the breach within 14 days and if the Customer does not remedy breach within 14 days after receiving such notice, Riordan Fuels may provide written notice to the Customer immediately terminating this agreement.

(b) Riordan Fuels may immediately terminate this Agreement or any other agreement with the Customer, without payment of any compensation, if the Customer:

(i) fails to pay any amount that is due and payable by Riordan Fuels under this agreement when the amount is due;

(ii) creates or permits any Security Interest over the Equipment, or the Equipment becomes subject to any event or change (whether foreseeable or not) which, in the Riordan Fuel's opinion, could have a Material Adverse Effect;

(iii) provides any false or misleading warranties under clause 13;

(iv) commits a serious or repetitious breach of any obligations, or any combination of obligations, set out in this agreement;

(v) commits an act of dishonesty, fraud, wilful disobedience, misbehaviour, or wilful neglect in the performance of the Customer's obligations under this agreement;

(vi) receives notice of cancellation of any insurance policies required under clause 12;

(vii) becomes subject to an Insolvency Event; or

(viii) becomes subject to a Change of Control.

(c) If this agreement is terminated for any reason:

(i) the Customer must pay Riordan Fuels for all amounts it owes Riordan Fuels, whether those amounts are due at that time or not, within seven days of receiving a tax invoice from Riordan Fuels in respect of the amounts owing;

(ii) clause 9 will apply in respect of the return or repossession of the Equipment;

(iii) each party must return to the other party within 5 Business Days after the date of expiry or termination, the other party's Confidential Information.

(d) The Customer is liable for all reasonable expenses (including contingent expenses such as debt collection commission) and legal costs (on a full indemnity basis) incurred by Riordan Fuel in enforcing its rights under this agreement and any Security Interests arising under them and the recovery of money payable by the Customer to Riordan Fuels.

17. Liquidated Damages

(a) Without limiting any other right or remedy that Riordan Fuels may have under this agreement or otherwise, where the aggregate quantity of Petroleum Products purchased by the Customer is less than the Minimum Yearly Quantity, the Customer will pay Riordan Fuels Liquidated Damages.

(b) The parties acknowledge that they have considered carefully the quantum of the Liquidated Damages prior to signing this agreement, and that they have agreed that such Liquidated Damages are a genuine pre-estimate of the loss Riordan Fuels is likely to suffer as a result of the Customer's failure to purchase the Minimum Yearly Quantity in accordance with clause 4(c), and are not a penalty. However, Riordan Fuels entitlement to Liquidated Damages will not prejudice its rights or remedies or relieve the Customer of any obligation or liability under this agreement (although any Liquidated Damages recovered under this clause 17 will be taken into account on any assessment of damages in relation to the relevant default).

(c) Riordan Fuel will not be entitled to Liquidated Damages to the extent that any failure to purchase the Minimum Yearly Quantity to comply with this agreement was caused by Riordan Fuel's default of this agreement

18. Security

(a) The Customer must not:

(i) sell, assign, dispose of, assign, encumber, mortgage, pledge, create any lien, or grant any security interest in, or in respect of; the Equipment or the Petroleum

(ii) Products contained within the Equipment;

(iii) grant to any person any sub-licence, licence or sublicence of the Equipment;

(iv) part with possession of the Equipment or the Petroleum Products within the Equipment; or

(v) grant a Security Interest over the Equipment or the Petroleum Products contained in the Equipment.

(b) The Customer must at all times keep the Equipment and Petroleum Products within the Equipment free from distress, execution or other legal process and ensure that no Security Interest is created over the Equipment, or the Petroleum Products contained within the Equipment.

(c) If any person seizes or attempts to seize or interfere with the Equipment or the Petroleum Products contain within the Equipment, the Customer must:

(i) notify that person of Riordan Fuel's title to and rights in relation to the Equipment and Petroleum Products; and

(ii) provide immediate written notice to Riordan Fuels of the seizure, attempted seizure or interference.

(d) In this agreement, unless the context requires otherwise, terms which are defined in the PPSA have the definitions in the PPSA.

(e) The Customer acknowledges that this agreement gives rise, or may give rise, to one or more PPS Security Interests.

(f) Nothing in this agreement may be taken as an agreement that any PPS Security Interest provided for by this agreement attaches later than the time contemplated by section 19(2) of the PPSA.

(g) The Customer acknowledges that Riordan Fuels has not agreed to subordinate any PPS Security Interest provided for by this agreement in favour of any other person.

(h) If, in breach of this agreement, the Customer attempts to dispose of or otherwise deal with any Equipment or Petroleum Products, the Customer acknowledges that, despite the disposal or dealing:

(i) Riordan Fuels has not authorised the disposal or agreed that the dealing would extinguish any PPS Security Interest provided for by this agreement; and

(ii) that PPS Security Interest continues in that Equipment and the Petroleum Products.

(i) The Customer acknowledges that Riordan Fuels may, at the Customer's cost, register one or more financing statements in relation to any PPS Security Interests under this agreement.

(j) If permitted by the PPSA, the Customer waives the Customer's rights under section 157 of the PPSA to receive notice of any verification statement relating to the registration of any such financing statement or any related financing change statement.

(k) The Customer must provide Riordan Fuels with all information required by Riordan Fuels to ensure that any registration of any Security Interest provided for by this agreement is, and remains, fully effective or perfected (or both) and that each Security Interest has the priority required by Riordan Fuels.

(l) The Customer must provide to Riordan Fuels at least 14 days prior notice of any change to the Customer's name or any other information that could affect the accuracy or validity of any financing statement in relation to any PPS Security Interest under this agreement.

(m) The Customer must do anything (including perfecting and protecting any Security Interest intended to be created by or pursuant to this agreement), and must ensure that each member of the Customer's Personnel do anything, that Riordan Fuels may reasonably require to more fully secure or exercise the rights, remedies and powers of Riordan Fuels under this agreement.

(n) The Customer must indemnify Riordan Fuels against and must pay Riordan Fuels on demand the amount of all costs and expenses incurred in connection with any action taken by Riordan Fuels under or in relation to the PPSA, including any registration, enforcement or any response to an amendment demand or a request under section 275 of the PPSA.

(o) Neither party will disclose information of the kind referred to in section 275(1) of the PPSA.

(p) The parties agree that the following provisions of the PPSA do not apply, to the extent the PPS Act allows such provisions to be excluded: sections 95, 118, 121(4), 125, 127, 129(2), 129 (3), 130, 132, 134(2), 135, 136(5), 137, 138B(4), 142 and 143.

19. Guarantee

(a) The Guarantor in consideration of Riordan Fuel having entered into this agreement at the Guarantor's request:

- **(i)** guarantees that the Customer will perform all its obligations under this agreement for the Term and during any period of overholding after the end of the Term;
- **(ii)** must pay on demand any amount which Riordan Fuels is entitled to recover from the Customer under this agreement whether in respect of the term or any period of overholding; and
- **(iii)** indemnifies Riordan Fuels against all loss resulting from Riordan Fuels having entered into this agreement whether from the Customer's failure to perform its obligations under it or from this agreement being or becoming unenforceable against the Customer and whether in respect of the term or any period of overholding.

(b) The liability of the Guarantor will not be affected by:

- **(i)** Riordan Fuels granting the Customer or a Guarantor time or any other indulgence, or agreeing not to sue the Customer or another Guarantor;
- **(ii)** failure by any Guarantor to sign this document; or
- **(iii)** transfer of the freehold of the Premises.

(c) The Guarantor agrees that:

- **(i)** Riordan Fuels may retain all money received including dividends from the Customer's bankrupt estate, and need allow the Guarantor a reduction in its liability under this guarantee only to the extent of the amount received;
- **(ii)** the Guarantor must not seek to recover money from the Customer to reimburse the Guarantor for payments made to Riordan Fuels until Riordan Fuels has been paid in full;
- **(iii)** the Guarantor must not prove in the bankruptcy or winding up of the Customer for any amount which Riordan Fuels has demanded from the Guarantor; and
- **(iv)** the Guarantor must pay Riordan Fuels all money which Riordan Fuels refunds to the Customer's liquidator or trustee in bankruptcy as preferential payments received from the Customer.

(d) If any of the Customer's obligations are unenforceable against the Customer, then this clause is to operate as a separate indemnity and the Guarantor indemnifies Riordan Fuels against all Liability resulting from Riordan Fuels inability to enforce performance of those obligations. The Guarantor must pay Riordan Fuels the amount of the loss resulting from the unenforceability.

(e) If there is more than one Guarantor, this guarantee binds them separately, together and in any combination

20. Force majeure

(a) A party (**Affected Party**) is not liable for any delay or failure to perform an obligation (other than to pay money) under this agreement caused by:
(i) act of God;
(ii) war, terrorism, riot, insurrection, vandalism or sabotage;
(iii) strike, lockout, ban, limitation of work or other industrial disturbance; or
(iv) law, rule or regulation of any government or governmental agency and executive or administrative order or act of general or particular application.

(b) The Affected Party must notify the other party as soon as practical of any anticipated delay or failure caused by an event referred to in clause 20(a) (Event).

(c) The performance of the Affected Party's obligation is suspended for the period of delay caused by the Event.

(d) If:
(i) performance of an obligation is prevented by an Event;
or
(ii) a delay caused by the Event exceeds 45 days; any party may terminate this agreement at the expiration of not less than 90 days' notice to the other party.

21. Taxes

(a) A reference in this clause 21 to a term defined or used in *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* is, unless the context indicates otherwise, a reference to that term as defined or used in that Act.

(b) Any consideration to be paid or provided for a supply made under or in connection with this agreement, unless specifically described in this agreement as GST inclusive, does not include an amount on account of GST.

(c) Despite any other provision in this agreement, if a party (**Supply Maker**) makes a supply under or in connection with this agreement on which GST is imposed (not being a supply the consideration for which is specifically described in this agreement as GST inclusive):

- **(i)** the consideration payable or to be provided for that supply under this agreement but for the application of this clause (**GST exclusive consideration**) is increased by, and the recipient of the supply (**Recipient**) must also pay to the Supply Maker, an amount equal to the GST payable by the Supply Maker on that supply; and
- **(ii)** the amount by which the GST exclusive consideration is increased must be paid to the Supply Maker by the Recipient without set off, deduction or requirement for demand, at the same time as the GST exclusive consideration is payable or to be provided.

(d) If a payment to a party under this agreement is a reimbursement or indemnification, calculated by reference to a loss, cost or expense incurred by that party, then the payment will be reduced by the amount of any input tax credit to which that party is entitled for that loss, cost or expense.

(e) The Customer will, at the Customer's cost, pay any Taxes in relation to the use of the Equipment

22. Notices

A notice to be given by a party under this agreement must be:

(a) in writing;

(b) directed to the recipient's address specified in this agreement or as otherwise advised or varied by written notice; and

(c) left at or sent by prepaid registered post, hand delivery, or email to that address,

and will be deemed to be duly given:

(d) if hand delivered, on the day of delivery;

(e) if sent by pre-paid registered post, three days after the date of posting by prepaid registered post;

(f) if it is sent by email, when the sender's email system generates or receives a message confirming receipt of (but not opening of) the email notice unless, within two (2) business hours after that transmission, the recipient informs the sender that it has been unable to read the entire notice, but if the notice is taken to be received on a day that is not a Business Day or after 5.00pm, it is taken to be received at 9.00am on the next Business Day

23. Electronic signing of agreement

(a) The parties acknowledge and agree that prior to the signing of this agreement both Riordan Fuels and the Customer consented to the agreement being electronically signed.

(b) This agreement may be validly created by counterparts electronically signed by each party and shall together be deemed to constitute one and the same instrument.

(c) It is agreed that the delivery of a counterpart of the agreement bearing an electronic signature rather than a 'wet' signature shall be deemed to bind the party whose signature is so represented.

(d) For the avoidance of doubt, no witnessing of a party's signature is required.

(e) The parties agree to be bound by copies of this agreement which has been electronically signed in accordance with this clause.

(f) The parties agree that they will be bound by, have complied with and will comply with the Electronic Transactions (Victoria) Act 2000, in relation to the execution of this Agreement.

24. General terms

(a) The agreement binds and benefits the parties and their respective successors and permitted assigns.

(b) The Customer must not assign or transfer its interest under this agreement without the prior written consent of Riordan Fuels.

(c) Each party must do all things and execute all further documents necessary to give full effect to this agreement.

(d) This agreement may be executed in any number of counterparts.

(e) This agreement is governed by and must be construed in accordance with the laws of the State of Victoria and the Commonwealth of Australia.

(f) Failure by Riordan Fuels to insist on strict performance of any term, warranty or condition in this agreement will not be taken as a waiver.

(g) The parties agree that if there is any inconsistency between either this agreement and the Account Application, then this agreement prevails to the extent of that inconsistency.

(h) Each party must pay its own costs in relation to:

- **(i)** the negotiation, preparation, execution, performance, amendment or registration of, or any consent given or made; and
- **(ii)** that party performing any action in complying with any liability arising, under this agreement, or any agreement or document executed or effected under this agreement, unless this agreement provides otherwise.

(i) This agreement is to be read in conjunction with the Account Application and:

- **(i)** Constitutes the entire agreement among the parties; and
- **(ii)** Supersedes all prior agreements and understandings of the parties,

in relation to the subject matter of those documents and a warranty, representation, guarantee relating to the subject matter of this agreement or other term not contained or recorded in the agreement, or the Account Application is of no force or effect.