

# THE BUYING GROUP LIMITED TRADE TERMS (Incorporating NZ FUEL CARDS TRADE TERMS)

06/2020

Please read the following Trade Terms carefully. They apply to the Fuel Card provided by The Buying Group Limited, (t/a NZ Fuel Cards) to the Customer, and to the Account and to any other transactions between The Buying Group Limited and the Customer, with effect from 01/06/2020.

## 1. DEFINITIONS AND INTERPRETATION

- 1.1 In this Agreement the words and phrases referred to below are defined as follows:
- "Account" means all accounts (however titled) provided by TBG/NZF to the Customer, to record the purchase of Products on credit, any other transactions between TBG/NZF and the Customer, and the incurring of fees and other charges by the Customer.
  - "Address for Service" means the postal address or email address or fax number last notified by the Customer and by the Guarantor; PO Box 1136, Nelson 7040 for TBG/NZF.
  - "Agreement" means these Trade Terms and the Application.
  - "Application" means the "Account Application Form" and/or "Fuel Card Application Form" or other TBG/NZF-approved form that a Customer must complete to make an application to TBG/NZF to open an Account and/or for the issue of a Fuel Card, including any electronic version of these forms submitted online.
  - "Authorised Person" means a person named on the Application, or otherwise advised in writing to TBG/NZF by the Customer, who is authorised on behalf of the Customer to apply for the issue of Fuel Cards.
  - "Bond" means an amount that TBG/NZF may from time to time require the Customer to pay to TBG to be held as a bond against the Customer's Account.
  - "Cardholder" means the person/legal entity named on and/or using a Fuel Card.
  - "Customer" means the person/legal entity described in the Application, and the persons/legal entities who apply for and open an Account.
  - "Default Event" means an event where:
    - the Customer fails, or in TBG/NZF's opinion is likely to fail, to comply with the Agreement, or any other contract with TBG/NZF;
    - the Customer commits an act of bankruptcy;
    - the Customer enters into any composition or arrangement with creditors;
    - if the Customer is a company:
      - does anything which would make it liable to be put into liquidation;
      - fails to provide a certificate of solvency within 10 days of receiving a written demand from TBG/NZF;
      - a receiver or statutory or official manager is appointed over all or any of its assets;
      - a resolution is passed or an application is made for liquidation;
      - the ownership or effective control of the Customer or the Customer's business is transferred or the nature of the Customer's business is materially altered.
  - "Due Date" means the date notified by TBG/NZF to the Customer by which Sum Owing must be paid and if no date is specified, is by the 10th day of the month following any purchase of Product.
  - "Fuel Card" means any card issued in accordance with an Application.
  - "Guarantor" means the guarantor(s) signing any Deed of Guarantee and Indemnity required by NZF.
  - "Outlet" means those service stations, merchants, dealerships, depots and fuel dispensing facilities throughout New Zealand where Fuel Cards are approved for use by NZF.
  - "PIN" means the Personal Identification Number for use with a Fuel Card.
  - "PPSA" means Personal Property Securities Act 1999.
  - "Product" means those goods and services authorised by TBG/NZF for purchase using Fuel Card from an Outlet or direct from NZF.
  - "Recommendation" means the best option for a given situation based on sources believed to be accurate.
  - "Sum Owing" means the amount due by the Customer to TBG/NZF as set out in clause 2.
  - "Supplier" means a supplier that TBG/NZF has a business relationship with.
  - "TBG/NZF" and "TBG" and "NZF" and "NZ Fuel Cards" means The Buying Group Limited (including its division NZ Fuel Cards), any person or entity acting for or on behalf of The Buying Group Limited, or with the permission or authority of The Buying Group Limited.
  - "Trade Terms" means these trade terms and the trade terms as amended from time to time by NZF.
- 1.2 In this Agreement, unless the context otherwise requires or specifically otherwise states: (a) amounts are in New Zealand Dollars; (b) the singular includes the plural and vice versa; (c) time is of the essence.

## 2. SUM OWING

- 2.1 TBG/NZF will send an invoice or statement in respect of the Account to the Customer twice per month, or as otherwise agreed.
- 2.2 The invoice or statement will show the Sum Owing to TBG/NZF at the time of issue, how that Sum Owing is calculated, and the Due Date for payment of the Sum Owing to TBG/NZF.
- 2.3 The Customer shall pay the Sum Owing to TBG/NZF:
- in full without any deductions, whether by way of set off, counter claim, or any other equitable legal claim;
  - by automatic bank direct debit initiated by TBG/NZF.

## 3. PAYMENT

- 3.1 The Customer shall pay the Sum Owing to TBG/NZF by the Due Date.
- 3.2 TBG/NZF may apply any payment received from or on behalf of the Customer, and any credits due to the Customer, in reduction of the Sum Owing as TBG/NZF thinks fit.
- 3.3 The Customer acknowledges:
- TBG/NZF continues to allow use of the Fuel Card on condition that all payments received by TBG/NZF from the Customer are valid and made in the ordinary course of the Customer's business;
  - TBG/NZF receives all payments in the ordinary course of the Customer's business and in good faith and in the reasonably held belief as to the validity of those payments;
  - the understanding of TBG/NZF towards its business with the Customer shall apply until the Customer gives notice in writing to TBG/NZF of the Customer's inability to pay due debts and that the Customer's purpose in making further payment is to enable TBG/NZF to receive more towards satisfaction of the Sum Owing than it would otherwise have received or have been likely to have received in any liquidation/insolvency of the Customer;
  - TBG/NZF has, in accepting each Customer payment, altered its position in reliance on the validity of each payment:
    - by delaying revocation of the authority granted to the Customer in clause 6.5b;
    - by the continued supply of Products after the receipt of each payment whether or not the Customer pays for the Products;
    - if payment is received after Due Date by foregoing its right to commence recovery action against the Customer, or Guarantor.

## 4. SUPPLY

- 4.1 The supply of Products shall be completed upon dispatch/supply from the Outlet to the Customer or Cardholder as the case may be.

## 4.2 TBG/NZF shall not:

- to the extent permitted by law, be liable for failure to supply, refusal to supply, defective supply of Products;
- guarantee a continuing relationship between the Customer and any Outlet.

## 5. SUPPLY OF AVIATION FUEL

- 5.1 For the purposes of this clause 5:
- "aviation fuel" means Jet A1 and Avgas.
  - a "restricted person" is any person, organisation or state to which the sale or supply of aviation fuel is prohibited by the laws of New Zealand or by any international law to which New Zealand is a signatory.
- 5.2 Only Fuel Cards that have been authorised by TBG/NZF for the supply of aviation fuel may be used by the Customer for the purchase of aviation fuel, and in the case of aviation fuel the specific provisions of this clause 5 apply in addition to the other provisions of the Trade Terms.
- 5.3 Where a Customer uses a Fuel Card for the purchase of aviation fuel:
- it is the Customer's responsibility to ensure that the correct type of aviation fuel for the Customer's needs has been purchased and supplied to the Customer;
  - the Customer shall at all times comply with all requirements (including regulatory requirements) of the Outlet supplying the aviation fuel, including completion of any documents required such as release notes;
  - it is the Customer's responsibility to ensure that any documents completed in respect of the supply of aviation fuel (including release notes) are completed correctly;
  - the Customer acknowledges that the Outlet may refuse to supply aviation fuel where the Customer does not, at the request of the Outlet, produce a Fuel Card that is authorised for the supply of aviation fuel;
  - the Customer acknowledges that TBG/NZF may at any time suspend or terminate the Customer's Account where TBG/NZF has reason to believe that the Customer is or will be a restricted person, and/or intends to sell, transfer or supply aviation fuel to a restricted person;
  - the Customer indemnifies TBG/NZF in respect of all liabilities, costs and expenses (including without limitation full costs between solicitor and client), claims or demands incurred by TBG/NZF or any third party resulting from the misfueling of any aircraft, the incorrect use of aviation products, and/or the death, injury or disease of any person arising from such misfueling or incorrect use.

## 6. RISK AND SECURITY INTEREST

- 6.1 Risk of any loss, damage or deterioration to the Products passes to the Customer upon supply.
- 6.2 Ownership in the Products remains with TBG/NZF and does not pass to the Customer until the Customer pays the Sum Owing to TBG/NZF.
- 6.3 Until payment of the Sum Owing the Customer shall insure the Products for their full insurable value.
- 6.4 The Customer grants a security interest in the Products to TBG/NZF as security for payment for the Products. Further, the Customer grants to TBG/NZF a security interest in all of the Customer's present and after acquired property as security for any amount from time to time owing by the Customer to TBG/NZF, and for the performance by the Customer of all the Customer's other indebtedness and obligations to TBG/NZF, whether in respect of the Account or otherwise.
- 6.5 Until full payment of the amounts due in respect of the Products and satisfaction of all the Customer's indebtedness and obligations to TBG/NZF:
- the Customer must store the Products separately, not mix them, and must identify them as belonging to TBG/NZF.
  - TBG/NZF authorises the Customer to use the Products in the ordinary course of the Customer's business.
  - the authority in 6.5b is revoked when:
    - a Default Event occurs; or
    - TBG/NZF notifies the Customer in writing that the authority is revoked.
  - if the Products (for which payment has not been made) are not kept in a manner so as to enable the Products to be clearly identified as the property of TBG/NZF, then TBG/NZF is deemed to be the owner of the quantity of the Products equivalent to the quantity of the Products for which payment has not been made.
  - the Customer must advise TBG/NZF immediately in writing of a Default Event or any action by third parties (including any of the Customer's creditors) affecting TBG/NZF security interest in the Products or TBG/NZF security interest in other property of the Customer.
  - TBG/NZF may, without notice, enter the premises where the Products are stored and remove them, without being responsible for any damage caused and the Customer shall indemnify TBG/NZF against any claim or costs arising from such action.
  - TBG/NZF may resell any of the Products and apply the proceeds of sale in reduction of the Sum Owing, and against any other amounts owing by the Customer to TBG/NZF.
- 6.6 The Customer agrees to promptly do anything that NZF reasonably requires to:
- ensure that TBG/NZF has a first ranking perfected security interest in all of the Products (and any sale proceeds); and
  - enable registration of financing statements or financing change statements under the PPSA.
- 6.7 Where the Customer resells or uses the Products before payment of the full amount due for the Products, the proceeds of such sale or use shall be held by the Customer (in whatever form) in trust for TBG/NZF to the extent that TBG/NZF has not been paid for the Products.

## 7. PPSA

- 7.1 The Customer:
- Agrees that these Trade Terms constitute a security agreement for the purposes of the PPSA;
  - Agrees that a security interest is taken in all Products previously purchased using a Fuel Card or other goods and services otherwise supplied by TBG/NZF to the Customer (if any) and all Products that will be purchased using a Fuel Card or other goods and services otherwise supplied in the future by TBG/NZF to the Customer;
  - Other than allowed by the PPSA, shall not register a financing statement or a change demand in respect of the Products without the prior written consent of TBG/NZF;
  - Agrees to contract out of the Customer's rights as detailed in sections 107(1) and 107(2) of the PPSA;
  - Undertakes to indemnify and, upon demand, reimburse TBG/NZF for all costs, expenses and other charges incurred in relation to:
    - the registering of a financing statement or financing change statement on the Personal Property Securities Register;
    - any disputes or negotiations with third parties claiming an interest in the Products; in connection with these Trade Terms.
- 7.2 The Customer waives the right to receive a copy of the verification statement confirming registration of a financing statement or financing change statement relating to the security interest under the Trade Terms.
- 7.3 The Customer shall unconditionally ratify any actions taken by TBG/NZF under clauses 7.1 and 7.2.

## 8. CLAIMS AND LIABILITY LIMITATION

- 8.1 Except as provided in any express warranty given and to the extent permitted by law, TBG/NZF:
- in respect of the Products, excludes all warranties, descriptions, representations or conditions whether implied by law, trade, custom or otherwise and whether relating to fitness, merchantability, suitability for purpose, or otherwise and all specific conditions even though such conditions may be known to TBG/NZF;
  - excludes liability in any way to the Customer, any Cardholder, or any other third party, whether in tort (including negligence), contract, or otherwise, for any loss or damage whatsoever whether direct, or indirect, special, or consequential, and the Customer indemnifies TBG/NZF against any such claim;
  - states that any liability in respect of the Products shall be limited to the price of the Products;
  - advises that it does not intend to contract out of the provisions of the Consumer Guarantees Act 1993 except to the extent permitted by that Act.
- 8.2 Without limiting any other provision in these Trade Terms, to the extent permitted by law TBG/NZF is not liable to the Customer or any Cardholder, whether directly or indirectly for:
- the actions of any Outlet;
  - any Products purchased on Fuel Card;
  - any fault with any automatic facility used in conjunction with the Fuel Card;
  - any fault with the Fuel Card (including the PIN) itself;
  - any fault with the electronic system which processes the Fuel Card transaction;
  - any unauthorised use, misuse or fraud with a Fuel Card and/or PIN where TBG/NZF has not received written notification of cancellation AND, where applicable, the returned Fuel Card from the Customer in accordance with clauses 9.4f and 9.5.
- 8.3 TBG/NZF may at its complete discretion, give credit for the Products not supplied or incorrectly recorded; or supplied and established to be defective, provided that:
- any claim in respect of such Products must be notified to TBG/NZF within 10 days following receipt of the invoice/statement showing the supply of the Products;
  - all claims must set out the nature of the claim in sufficient detail to enable TBG/NZF to investigate the claim; and
  - the Customer shall take all steps to ensure that TBG/NZF has every opportunity to investigate the claim.
- 8.4 The decision by TBG/NZF in respect of a Customer claim shall be accepted as conclusive and binding by the Customer.
- 8.5 Where the Customer acquires the Products for business purposes, the Customer agrees that the statutory guarantees and implied terms, covenants and conditions contained in the Consumer Guarantees Act 1993 and Part 3 of the Contract and Commercial Law Act 2007 (Sale of Goods) does not apply to the Products. (In the absence of express written acknowledgement by TBG/NZF to the contrary the application by the Customer for an Account is determination that the Customer acquires Products for "business purposes".)
- 8.6 The Customer is not permitted to on-sell the Products. The Customer indemnifies TBG/NZF against any liability or costs, incurred by TBG/NZF under the Consumer Guarantees Act 1993 and/or Part 3 of the Contract and Commercial Law Act 2007 (Sale of Goods), as a result of any breach by the Customer of this restriction or any other term of the Agreement.
- 8.7 To the extent permitted by law, the provisions of Subpart 3 of Part 2 of the Contract and Commercial Law Act 2007 (Contractual Remedies) shall apply to this contract as if section 59(1)(e) were omitted from that Subpart.
- 8.8 In addition to any other limitation or exclusion of TBG/NZF's liability in this Agreement, and for the avoidance of doubt, TBG/NZF is not liable, to the extent permitted by law, for any loss, claims or damage of any kind whatsoever suffered by the Customer or any Cardholder arising directly or indirectly from any fuel purchased by the Customer or any Cardholder using the Fuel Card, not meeting or complying with:
- any specifications required by law, including, but without limitation, the specifications set out in the Engine Fuel Specifications Regulations 2011 as amended or replaced from time to time; or
  - any warranty, representation, description or claims made by the Supplier or Outlet or both, that the fuel meets or complies with certain standards including, but without limitation, standards set by the Supplier, Outlet, legislation, regulatory body, local authority or otherwise.

## 9. THE NZF FUEL CARD

- 9.1 TBG/NZF and/or the Supplier retain ownership of any Fuel Card issued to a Customer.
- 9.2 The Fuel Card is issued by TBG/NZF to a Customer for use at the Outlets, by their Cardholders. Any Cardholder using a Fuel Card acts as an agent of the Customer in all respects in use of the Fuel Card.
- 9.3 The Customer is responsible for:
- advising all Cardholders of their obligations as the Customer's agent under the Agreement;
  - ensuring that all Cardholders comply with the Agreement;
  - all use of a Fuel Card, whether authorised by the Customer or not;
  - notifying TBG/NZF of any changes in the persons who are Authorised Persons.
- 9.4 The Customer must ensure that the Cardholder:
- not use the Customer Account number as a PIN;
  - keep the PIN secure;
  - not allow anyone else to use the Fuel Card or PIN;
  - not attempt to obtain cash for refund of Products or be party to negotiation for direct "cash" discounts with a Supplier or an Outlet;
  - where a credit is due from a Supplier or an Outlet, ensure that the credit is passed in to TBG/NZF for the credit of the Customer;
  - notify the Customer and NZF immediately if the Fuel Card is lost, stolen, misused, or the PIN is disclosed. Liability of the Customer for Products purchased by the unauthorised use of the Fuel Card (except where it results from fraud or negligence), shall cease only upon written acknowledgement by TBG/NZF of this notification;
  - return or destroy the Fuel Card when required to do so, or the Account is closed.
- 9.5 The Customer:
- may cancel a Fuel Card where it is no longer required by returning it to TBG/NZF;
  - must return any cancelled Fuel Card (unless lost or stolen), cut in half, to TBG/NZF. The Customer will remain liable for all transactions recorded against a cancelled Fuel Card until such time as the cancelled Fuel Card is actually received by TBG/NZF (except where the Fuel Card is cancelled pursuant to clause 9.4f).
- 9.6 TBG/NZF shall not be responsible for:
- the issue of a Fuel Card to any person who is not authorised as a Cardholder by the Customer, where a request is made for a Fuel Card by an Authorised Person;
  - any dispute between the Customer and Cardholder;
  - any dispute between the Customer and/or Cardholder, and any Supplier;
  - any dispute between the Customer and/or Cardholder, and any Outlet;
  - the actions of any Supplier or Outlet;
  - any credit due by a Supplier or Outlet to a Customer until notification of such credit is received from the Supplier or Outlet;
  - any losses caused by occurrences beyond its control where a Fuel Card is unable to be used.
- 9.7 The Customer shall not join TBG/NZF as a party to any claim involving a Supplier or Outlet and expressly agrees that any breach of this term is a Default Event.

## 10. FEES

- 10.1 The following fees may be added to the Account by TBG/NZF, and will therefore form part of the Sum Owing:
- the current monthly card fee per Fuel Card;
  - a replacement card fee for any replacement Fuel Cards;

- the current transaction fee for each transaction on a Fuel Card;
  - a courier fee for each order of Fuel Cards;
  - a dishonour fee if any payment by the Customer is dishonoured or delayed;
  - any other fees charged by TBG/NZF, including fees charged for fuel management reports.
- 10.2 TBG/NZF reserves the right to vary these fees without notice to the Customer.

## 11. DEFAULT AND CONSEQUENCES OF NON PAYMENT

- 11.1 Should a Default Event occur TBG/NZF may suspend or cancel any Fuel Card and the Account, and the Sum Owing shall immediately become due and payable notwithstanding that the Due Date has not arrived.
- 11.2 If the Customer does not pay the Sum Owing by the Due Date, or in accordance with clause 11.1:
- TBG/NZF may charge interest at the rate of 2.5% per month (or such other rate as shall be notified on its website) in respect of the Sum Owing. Such interest shall accrue on a daily basis from the Due Date until payment in full and is charged for failure to pay and does not imply the granting of, or extension of, credit by TBG/NZF to the Customer. Failure to charge interest in accordance with this clause in any month does not preclude TBG/NZF from charging interest in accordance with this clause in any other month.
  - If the Sum Owing remains overdue after thirty (30) days then an amount of \$20.00 or 10.00% of the amount overdue (up to a maximum of \$200), whichever is the greater, shall be charged for administration fees and shall become immediately due and payable.
  - TBG/NZF may reverse any discounts recorded on the Account.
  - TBG/NZF may debit any other account the Customer may have to pay the Sum Owing.
  - TBG/NZF may apply any Bond held against the Sum Owing, at such time and on such terms and conditions as TGB may determine, with any balance of the Bond not used to pay the Sum Owing to be refunded to the Customer on TBG/NZF closing the Account.
  - The Customer shall be liable to pay for, and shall indemnify TBG/NZF against all Account transaction fees as may be deemed appropriate by TBG/NZF, administration collection costs, legal costs of TBG/NZF as between solicitor and client, and any collection commissions, incurred as a consequence of a Default Event.
- 11.3 TBG/NZF shall have the right (at its discretion) to complete and register an all obligations mortgage (Registrar General of Land approval 2018/4344) or caveat over any property owned by the Customer to secure the Sum Owing and the Customer irrevocably appoints a director of TBG/NZF as the attorney of the Customer for the purpose of completing such mortgage or caveat whilst the Sum Owing remains unpaid.
- 11.4 TBG/NZF may commence an action for any amount owing by the Customer where that amount is not paid by the Due Date or in accordance with clause 11.1.

## 12. THE PRIVACY ACT 1993 INFORMATION USE

- 12.1 The Customer and Guarantor agree that:
- the personal information provided, obtained and retained by TBG/NZF about them (including personal information about Customer's and/or Guarantor's directors, officers or trustees) will be held and used for any or all of the following purposes including:
    - determining eligibility for credit, including requesting information from credit reference and reporting agencies,
    - decisions regarding the supply of Products,
    - enforcing debt and legal obligations under the Agreement,
    - the marketing of goods and services including emails and market research by TBG/NZF and any TBG/NZF Supplier,
    - TBG/NZF providing the information to other providers of credit and credit reference and reporting agencies and debt collection agencies, in response to genuine credit related enquiries by such other providers and agencies.
  - The Customer and the Guarantor give irrevocable authority to TBG/NZF to:
    - use any personal information for the purposes in clause 12.1a;
    - obtain any information concerning the Customer and/or the Guarantor (including personal information about Customer's and Guarantor's directors, officers or trustees) from any other source for the purposes of TBG/NZF's business with the Customer.
- 12.2 The Customer and Guarantor must notify TBG/NZF of any change in circumstances that may affect the accuracy of the information provided by them to TBG/NZF.
- 12.3 The Customer acknowledges, and will advise the Cardholder that, TBG/NZF may record the Cardholder's name in conjunction with the Fuel Card issued to that Cardholder.
- 12.4 The Customer, Cardholder, Guarantor as a natural person and the Customer's and Guarantor's directors, officers or trustees, have rights of access to, and correction of any personal information held by TBG/NZF.
- 12.5 Where the Customer and/or Guarantors are an individual the authorities under clause 12.1a are authorities or consents for the purposes of the Privacy Act 1993.
- 12.6 The Customer and Guarantors, and the Customer's and Guarantor's directors, officers or trustees, and the Cardholders shall have the right to request from TBG/NZF, a copy of the information about themselves retained by TBG/NZF and the right to request TBG/NZF to correct any incorrect information about themselves held by TBG/NZF.
- 12.7 The Customer acknowledges that TBG/NZF may gather and share non-personal information, such as aggregated information, with third parties for a variety of purposes in the sole discretion of TBG/NZF. However TBG/NZF may only do so in such a way that no individual Customer is specifically identified or linked to any specific action or information.

## 13. APPLICATION

- 13.1 It is the Customer's responsibility to ensure that all information provided in the Application, and in any other manner, to TBG/NZF is true and correct. The Customer must not withhold any information that the Customer reasonably should consider TBG/NZF should be aware of in considering the Application.
- 13.2 If any of the information provided in the Application is incorrect, or if any information has been withheld as referred to in clause 13.1, TBG/NZF may close the Account.

## 14. ASSIGNMENT/CANCELLATION

- 14.1 TBG/NZF shall be entitled to assign to any other person or company all or part of the Sum Owing and the assignee shall be entitled to claim all or part of the Sum Owing and shall have the same rights of recovery as TBG/NZF.
- 14.2 TBG/NZF may assign the Agreement to any third party.
- 14.3 TBG/NZF shall be entitled to cancel all or any part of the Trade Terms at any time with or without prior notice. Any such cancellation shall be without prejudice to TBG/NZF's rights and remedies including, but not limited to, those which may arise from any breach or non-compliance by the Customer.

## 15. FUEL CARD WEB PORTAL

- 15.1 TBG/NZF may, at its discretion, offer to provide to the Customer online services from time to time (Online Services) through its web portal of domain name <http://clientportal.nz/> or other website as notified by TBG/NZF to the Customer from time to time (Portal), to enable the Customer's nominated persons to administer the Fuel Card. The Customer agrees that by their nominated persons using the Online Services, the Customer shall be bound by the terms and conditions for the Online Services as published on the Portal and as updated by TBG/NZF from time to time in addition to the terms and conditions of the Agreement. TBG/NZF reserves the right to charge additional fees for the Online Services as notified by TBG/NZF to the Customer from time to time. In the event there is any conflict between the Agreement and the terms and conditions of

the Online Services, the terms and conditions of the Online Services shall prevail to the extent of the conflicted provisions.

#### **16. OTHER SUPPLY TERMS**

- 16.1 If there is any inconsistency between the Agreement and any order submitted by the Customer, or any other arrangement between the parties, the Agreement shall prevail unless otherwise agreed in writing by the parties.
- 16.2 The Customer and Cardholder shall not approach any Supplier or Outlet for direct discounts, use the name of TBG/NZF, or reveal Supplier trading terms in any attempt to obtain personal discounts from businesses not associated with TBG/NZF. A breach of this term shall be a Default Event.

#### **17. WAIVER**

- 17.1 If at any time TBG/NZF does not enforce the Trade Terms, or grants the Customer time or other indulgence, TBG/NZF shall not be construed as having waived the Trade Terms or its right to later enforce the Trade Terms.

#### **18. TERMS SEPARATELY BINDING**

- 18.1 Each clause of the Trade Terms is separately binding. If any provision of the Trade Terms is found to be illegal, invalid or unenforceable, that provision shall be read down to the extent necessary and reasonable in all circumstances to give it a valid operation or partial character. If any provision cannot be so read down, that provision will be void and severable and the remaining provisions will not in any way be affected or impaired.

#### **19. CHANGING THE TRADE TERMS**

- 19.1 TBG/NZF may add, change or remove clauses in the Trade Terms.
- TBG/NZF can change the Trade Terms at any time without obtaining the consent of the Customer.
  - TBG/NZF may advise when changes to the Trade Terms are to take effect by notice to the Customer's Address for Service, or by publishing the changes on NZF website at [www.nzfuelcards.co.nz](http://www.nzfuelcards.co.nz) and on the TBG website at [www.thebuyinggroup.co.nz](http://www.thebuyinggroup.co.nz).

#### **20. ACCEPTANCE OF TRADE TERMS**

- 20.1 By signing the Application/Guarantee, and/or by using the Account, the Customer/Guarantor acknowledges that the Trade Terms apply to the Account.
- 20.2 The Customer acknowledges receiving a copy of the Trade Terms prior to signing the Application. A further copy can be obtained from TBG/NZF at the Address for Service or by downloading from the NZF website [www.nzfuelcards.co.nz](http://www.nzfuelcards.co.nz) or the TBG website at [www.thebuyinggroup.co.nz](http://www.thebuyinggroup.co.nz).

#### **21. CORRESPONDENCE**

- 21.1 TBG/NZF will send or deliver all correspondence to the Customer, including invoices and statements, to the Address for Service as provided by the Customer. Delivery is deemed to occur as follows:
- for correspondence sent by post, 4 days after it has been sent;
  - for a facsimile, upon confirmation of transmission;
  - for a document has been served and received, on the date of delivery;
  - for an email, 1 day after it has been sent.
- 21.2 The Customer:
- must inform TBG/NZF by giving not less than 14 days prior notice in writing (addressed to the General Manager):
    - of any proposed change in the Customer name;
    - if the Address for Service or contact phone number is changed.

#### **22. CLOSING ACCOUNT**

- 22.1 The Customer must inform TBG/NZF by giving not less than 14 days prior notice in writing (addressed to the General Manager) where the Account is to be closed.
- 22.2 The Customer remains liable for the Sum Owing, all Fuel Card use, all Products supplied, and all invoices debited to the Account until TBG/NZF has acknowledged in writing receipt of the Customer instructions to close the Account and the Customer has paid all amounts owing to TBG/NZF.

#### **23. USE OF PRODUCTS**

- 23.1 From time to time, TBG/NZF or a Supplier may provide advice, information or Recommendation to the Customer /Cardholder relating to the Products. Such advice, information or Recommendation is given in good faith and based on the information provided by the Customer/Cardholder. The Customer acknowledges that the decision to order and use the Products, or follow the Recommendation is that of the Customer/Cardholder and is made of the Customer's/Cardholder's own volition.

#### **24. RETURNS**

- 24.1 Where TBG/NZF at its discretion allows the Customer to return the Products (not defective or non complying), TBG/NZF reserves the right to charge, in addition to any delivery costs, a return fee.
- 24.2 The return fee may be added to the Account by TBG/NZF, and will therefore form part of the Sum Owing.

#### **25. CIRCUMSTANCES BEYOND CONTROL**

- 25.1 TBG/NZF shall not be liable for any delay or failure to supply the Products, or to meet any other obligations owed to the Customer, where such delay, failure or omission is due to circumstances beyond the reasonable control of TBG/NZF.

#### **26. LEGAL FORUM**

- 26.1 The Customer acknowledges that any dispute or legal proceedings between the Customer and TBG/NZF shall be filed in and be heard at either the Disputes Tribunal or the District Court at Nelson, or the High Court at Nelson. The parties to the Agreement expressly acknowledge that the cause of action or a material part thereof arises within the jurisdiction of the Disputes Tribunal or the District Court at Nelson, or the High Court at Nelson.
- 26.2 The Agreement is subject to and governed by New Zealand law. The language of the Trade Terms shall only be 'English'.