

# CREDIT ACCOUNT TERMS AND CONDITIONS

## 1. Definitions and interpretation

**Conditions** means these Credit Account Terms and Conditions.

**Consequential Loss** means loss of expected savings, loss of use, loss of opportunity, loss of profit, loss of revenue, increased financing costs, loss arising from delay, or any consequential, special or indirect loss or damage, whether or not the possibility or potential extent of the loss or damage was known or foreseeable, and whether arising from a claim under indemnity, contract, tort (including negligence), statute or otherwise.

**Customer** means the party making this application for credit.

**Goods** means any goods supplied by the Supplier being fuel products and all related or ancillary goods.

**Insolvency Event** means, for the Customer, as applicable, being in liquidation or provisional liquidation, bankruptcy or under administration, having a controller (as defined in the Corporations Act 2001) or analogous person appointed to the Customer or any of the Customer's property, being taken under section 459F(1) of the Corporations Act to have failed to comply with a statutory demand, being unable to pay the Customer's debts, dying, ceasing to be of full legal capacity or otherwise becoming incapable of managing the Customer's own affairs for any reason, taking any step that could result in the Company becoming an insolvent under administration (as defined in section 9 of the Corporations Act 2001), entering into a compromise or arrangement with, or assignment for the benefit of, any of the Customer's members or creditors, or any analogous event.

**Loss** means any expense, cost or damage of any kind and includes Consequential Loss and a fine or penalty imposed by a statutory or other authority.

**New URG Entity** means an entity that becomes a Related Body Corporate of URG after this application for credit is made by the Customer.

**Real Property** means all real property interests held by the Customer now or in the future.

**Related Bodies Corporate** has the same meaning as in the Corporations Act 2001.

**Services** means any services provided by the Supplier being the cartage of fuel owned by the Customer or a third party or the supply of fuel to the Customer and the Customer's use and purchase of fuel from URG-supplied Transtanks, petrol stations owned and operated by URG, bulk haulage transported to third party property or premises by URG or any other means and all related or ancillary services.

**Supplier** means, in connection with the supply of any Goods or Services, the URG Group Company making the supply to Customer.

**Supplier Terms** means any terms and conditions of quotation and supply, however described, notified by the Supplier to the Customer (whether on an invoice, quote, through the Supplier's website, docket or otherwise), or supply agreement (however described) in the Supplier's standard form entered into in writing between the Supplier and Customer.

**URG** means United Retail Group Pty Ltd (ACN 109 680 533) trading as Riordan Fuels (ABN 64 109 680 553)

**URG Group Company** means URG or a Related Body Corporate of URG.

Singular words include the plural and vice versa. A mention of anything after include, includes or including, does not limit what else might be included.

## 2. Structure of this document

- (a) These Conditions are intended to regulate key trading terms including the extension of credit in connection with the supply of Goods or Services by URG Group Companies to the Customer.
- (b) The terms set out in Part A of these Conditions are incorporated by reference as part of the Supplier Terms. Those terms are legally binding between the Supplier and the Customer and should be read together with the Supplier Terms. To the extent of any inconsistency, the Supplier Terms (excluding the incorporated Part A of these Conditions) prevail over these Conditions.

## PART A

### 3. Customer obligations

- (a) These Conditions apply if the Supplier accepts any order for Goods or Services or both from the Customer, whether for cash or on credit. The Customer has no entitlement to credit unless in the Supplier's sole discretion the Supplier extends credit to the Customer. If in a particular case, the Supplier gives the Customer credit, the Supplier still reserves the right at any time and for any reason in the Supplier's sole discretion to refuse to supply any further Goods or Services to the Customer and to refuse to supply any Goods or Services or both to the Customer on credit terms. If the Supplier does decline to give the Customer further credit then that decision does not affect the credit terms which apply to any amounts the Customer then owes to the Supplier.
- (b) If the Customer fails to comply with any of the terms of these Conditions or in respect of any obligation to pay money to another URG Group Company when due, suffers an Insolvency Event or makes any misrepresentation to a URG Group Company, the balance of the Customer's account to the Supplier will become due and payable immediately.
- (c) **The Customer agrees that it must:**
  - (i) pay, without any deduction or setoff, the price charged by the Supplier for Goods or Services supplied to the Customer on delivery or performance, or, if credit terms are offered, within 14 days following the end of the month during which the goods or services were supplied or provided.
  - (ii) pay any stamp duty assessed on this document or fee to register or maintain any security interest held by the Supplier in respect of Goods or Services supplied to the Customer.
  - (iii) advise the Supplier in writing of the occurrence of any Insolvency Event, any change in its name, ownership or control, or any step being taken to sell an asset or assets (separately or together having a value being greater than 20% in value of its gross assets) as soon as practicable and not later than within two business days of such event, change or step occurring. The Customer acknowledges that, despite any such event, change, or step the Customer remains liable to pay the price for all Goods or Services supplied.
- (d) In relation to URG-issued fuel cards, the Customer is responsible for all debt incurred on them. Cards lost, stolen or damaged must be reported to URG immediately. Fuel obtained with a Customer's fuel card prior to notification of theft is treated as regular usage by the Customer.

#### 4. Overdue accounts and security

- (a) Any amount not paid by the due date will incur interest at a rate of 5% above the Reserve Bank of Australia Cash Rate calculated daily and compounded monthly but in no circumstances will the interest charged exceed 20% per annum.
- (b) The Customer agrees to pay all costs and expenses (including legal costs, commissions paid by the Supplier or its Related Bodies Corporate to any commercial or mercantile agent and dishonour fees) incurred by the Supplier in connection with the recovery of overdue amounts and enforcing the charge in clause 4(c).
- (c) As security for any amounts due to the Supplier from time to time, the Customer charges all of its legal and equitable interest (both present and future) of whatsoever nature held in any and all Real Property to the Supplier.
- (d) Without limiting the generality of the charge in clause 4(c), the Customer, agrees, on request by the Supplier, to execute any documents and do all things reasonably required by the Supplier to perfect the charge given in clause 4(c) including registering a mortgage security over any Real Property. The Customer appoints URG to be the Customer's lawful attorney for the purposes of executing and registering such documents and taking all such steps in that regard. The Customer indemnifies the Supplier on an indemnity basis against all costs and expenses incurred by the Supplier in connection with the preparation and registration of any such steps needed to perfect the security or prepare or register the mortgage documents.
- (e) The Customer consents unconditionally to the Supplier lodging a caveat or caveats noting its interest in any Real Property.
- (f) The Supplier appoints URG as its non-exclusive agent to collect any debts owed by the Customer that are due from time to time to the Supplier.
- (g) A statement in writing signed by an authorised officer of the Supplier setting out the moneys due or owing to the Supplier at the date of the statement shall be sufficient evidence of the amount so due or owing until the contrary is proven.
- (h) The Supplier acknowledges that any payment made to URG for a debt owed to the Supplier is in full satisfaction of the debt owed to it, to the extent of the payment made.

#### 5. Supply and Delivery

- (a) URG must endeavour to supply the Goods consistently and regularly. However, any date for delivery of the supply of Goods is an estimated date of delivery only. URG is not liable for any Loss or Consequential Loss, if supply of the Goods is not completed by the estimated delivery date.
- (b) In addition to the provisions of clause 5(a), URG will not be liable for any delay in the supply of Goods for any reason where such delay is due to strike, lock out, riot, industrial action, fire, storm, tempest, act of god, material shortage, government law or regulation or requirement or any other cause beyond the control of URG.
- (c) Where URG makes a supply of Goods to premises or a property in possession of a third party (at the Customer's request) URG will endeavour to obtain a written acknowledgment of delivery from any manager, operator, employee or person appearing to be in charge of the premises or property or reasonably appearing to be acting on behalf of the Customer or the third party in possession of the premises. Any acknowledgment signed in such circumstances will be conclusive proof of delivery as to the quantity and quality of the Goods delivered.

- (d) If at the time of supply, the third party's premises or property are/is untended or a written acknowledgment is not able to be reasonably obtained by URG, the Customer must notify URG of any quantity or quality discrepancy in the Goods within 24 hours of supply, otherwise the quantity and quality of Goods will be deemed to be as recorded on reasonable grounds by URG.

#### 6. Retention of Title

- (a) The Supplier retains legal and equitable title in any Goods supplied to the Customer until payment in full for or in connection with the supply of the relevant Goods has been received by the Supplier. Until payment in full has been received, the following terms apply.
- (b) Notwithstanding that title in the Goods remains with the Supplier until payment has been received in full, the Customer may use the Goods in the ordinary course of the Customer's business. As between the Customer and the purchaser of any amount of the Goods, the Customer sells as principal and not as agent of the Supplier. The proceeds of sale of each item of Goods must be held by the Customer in a separate fund on trust for the Supplier and the Customer is under a duty to account to the Supplier for such proceeds. The creation of, or any failure of, any such trust shall not in any way limit the obligation of the Customer to pay an amount to the Supplier for Goods supplied.
- (c) Until Goods are sold or used in up in the ordinary course of the Customer's business, the Customer must keep the Goods safe and free from deterioration, destruction, loss or harm, clearly designate the Goods as the property of the Supplier, store them in such a way they are clearly identified as the property of the Supplier and keep full and complete records, firstly, of the physical location of the Goods and, secondly, the ownership of the Goods by the Supplier.
- (d) The Supplier is irrevocably entitled at any time and from time to time before sale of any item of Goods by the Customer to inspect or to recover and retake possession of such Goods and otherwise exercise in relation to the Goods any of its rights whether those rights are as owner and/or unpaid Seller or otherwise and whether those rights are conferred by common law, contract, statute or in any other way. In order to exercise such entitlement, the Supplier and its agents are irrevocably authorised by the Customer to enter any of the Customer's premises or vehicles or those of any third party. The Customer agrees to obtain the consent of any such third party to such entry by the Supplier and to indemnify the Supplier and its agents for any liability arising from any entry upon such third parties' premises or vehicles. The Supplier and its agents agree to take all reasonable care in removing the Goods from such premises or vehicles but, to the extent this liability may be disclaimed by law, are not liable for any damage or injury to such premises caused by the removal of the Goods.
- (e) This reservation of title and ownership is effective whether or not the Goods have been altered from their supplied form, or commingled with other goods.

## 7. Security interest

- (a) The retention of title arrangement described in clause 6 constitutes the grant of a purchase money security interest by the Customer in favour of the Supplier in respect of all present and after acquired Goods supplied to the Customer by the Supplier.
- (b) The Customer must immediately, if requested by the Supplier, sign any documents, provide all necessary information and do anything else required by the Supplier to ensure that the Supplier's purchase money security interest is a perfected security interest.
- (c) The Customer will not enter into any security agreement that permits any other person to have or to register any security interest in respect of the Goods or any proceeds from the sale of the Goods until the Supplier has perfected its purchase money security interest.
- (d) The parties agree to contract out of the application of ss 95, 118, 121(4), 130, 132(4), 135, 142 or 143 of the PPSA in relation to the Goods.
- (e) The Customer hereby waives any rights the Customer may otherwise have to:
  - (i) receive any notices the Customer would otherwise be entitled to receive under ss 95, 118, 121, 130, 132 or 135
  - (ii) apply to a Court for an order concerning the removal of an accession under section 97
  - (iii) object to a proposal of the Customer to purchase or retain any collateral under ss 130 and 135
  - (iv) receive a copy of a verification statement confirming registration of a financing statement, or a financing change statement, relating to any security interest the Supplier may have in Goods supplied to the Customer from time to time.
- (f) For the purposes of this clause "PPSA" means the Personal Property Securities Act 2009.
- (g) The expressions "accession", "collateral", "financing statement", "financing change statement", "security agreement", "security interest", "perfected security interest" and "verification statement" have the meanings given to them under, or in the context of the PPSA. References to sections are to sections of the PPSA.

## 8. Risk

Risk in relation to any Goods passes to the Customer on supply of the Goods. Supply of Goods will be at the Customer's premises or at a third party's premises or property as requested by the Customer, its employees, agent or contractors.

## 9. Exclusion of implied terms

The Customer may have the benefit of consumer guarantees under the Australian Consumer Law. Otherwise, to the maximum extent permitted by law, all terms, conditions or warranties that would be implied into Supplier Terms or in connection with the supply of any Goods or Services by the Supplier under law or statute or custom or international convention are excluded.

## 10. Limitation of liability

To the maximum extent permitted by law and subject to clauses 9 and 11, the Supplier's total liability arising out of or in connection with its performance of its obligations pursuant to these Conditions, the Supplier Terms, or arising out of or in connection with the supply of specific Goods or Services (including pursuant to or for breach of these Conditions, Supplier Terms or repudiation thereof, under statute, in equity or for tort, including negligent acts or omissions) is limited as follows:

- (a) the Supplier shall have no liability to the Customer for any Consequential Loss;
- (b) the Supplier's total aggregate liability for Loss, however arising, shall not exceed the GST exclusive aggregate price paid by the Customer to the Supplier for the specific Goods or Services that gave rise to the Loss in question. The limitations and exclusions in this sub-clause 10(b) do not apply to the extent that any Loss is directly attributable to:
  - (i) the personal injury or death caused by the Supplier's default, breach of these Conditions or the Supplier Terms or negligence; or
  - (ii) fraud by the Supplier.
 Each party must take reasonable steps to mitigate any Loss it suffers or incurs.

## 11. Limitation of liability under Australian Consumer Law Guarantees

To the extent that Goods supplied by the Supplier are not goods of a kind ordinarily acquired for personal, domestic or household use and the Customer is deemed to be a consumer for the purposes of section 64A of the Australian Consumer Law, the Customer agrees that the Supplier's liability for a failure to comply with a consumer guarantee that the Customer may have a benefit under the Australian Consumer Law (other than a guarantee under ss 51 (title), 52 (undisturbed possession) and 53 (undisclosed securities), is limited to, at the option of the Supplier, one or more of the following:

- (a) 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; or
- (d) equivalent Goods; or
- (e) the payment of the cost of having the Goods repaired.

To the extent that Services supplied by the Supplier are services other than services of a kind ordinarily acquired for personal, domestic or household use or consumption, the Supplier's liability for failure to comply with a consumer guarantee that the Customer may have the benefit of is limited to, at the option of the Supplier:

- (a) the supply of the Services again; or
- (b) the payment of the cost of having the Services supplied again.

## 12. GST

If the Supplier has any liability to pay Goods and Services Tax (GST) on the supply of any Goods or Services to the Customer, the Customer must pay to the Supplier an amount equivalent to the GST liability of the Supplier at the same time as the consideration is paid for the Goods or Services (unless the consideration for that supply is expressed specifically to be GST inclusive).

## 13. Direct Debit Authority

- (a) The Customer agrees to provide to URG in the form specified by the URG from time to time full details of all bank accounts that the Customer operates in relation to its business(es) and all changes to such bank accounts from time to time and full details of all business transacted through such accounts upon written request from the URG.
- (b) On URG's request, the Customer agrees to provide to URG signed documents which enable URG to direct debit any bank account that the Customer operates in relation to its business(es) moneys payable by the Customer to the URG pursuant to these Conditions entered into between the Customer and URG.

## PART B

### 14. New URG Entities

- (a) It is intended that all New URG Entities will have the benefit of these Conditions.
- (b) The Customer promises URG that it will only order Goods or Services from a New URG Entity on the strict condition that these Conditions apply to such an order and that the New URG Entity will have the benefit of and may enforce these Conditions irrespective of the fact that the New URG Entity may not have been in existence or a Related Body Corporate of URG Limited at the time of initial acceptance by the Customer of these Conditions.

### 15. Privacy disclosure and consent

The Customer authorises URG to:

- (a) obtain credit information about its personal, consumer and commercial credit worthiness from any bank or trade referee disclosed in this document and from any other credit provider or credit reporting agency for the purpose of assessing this application for credit, or in connection with any guarantee given by the Customer;
- (b) use, disclose or exchange with other credit providers and URG Corporate Group entities information about the Customer's credit arrangements in order to assess this application for credit, monitor creditworthiness and collect overdue accounts, and;
- (c) disclose the contents of any credit report on the Customer to the Supplier and other Related Bodies Corporate of URG, and any of their solicitors and mercantile agents

If the Customer does not provide the information requested in this document, URG may be unable to process the application. URG complies with the privacy principles imposed by law in relation to the collection and disclosure of information regarding individuals.

### 16. Governing law

This Agreement is governed by and must be construed in accordance with the Laws of the State of Victoria. The parties submit to the non-exclusive jurisdiction of the Courts of the State of Victoria.