



## TERMS AND CONDITIONS

### 1. DEFINITIONS

- 1.1 "IFUELS" means Independent Fuel Solutions Pty Ltd ABN 90 620 550 and includes any holding company, subsidiary or related body corporate, any business owned or operated by the IFUELS and the successors, transferees and assigns of any one or more of the companies or entities herein described.
- 1.2 "Customer" means the entity that has contracted with IFUELS to buy Goods and/or Services.
- 1.3 "Goods" means any goods supplied by IFUELS, its manufactures and/or its agents and suppliers (or ordered by the Customer but not yet supplied) including, and in no way limited to fuel products, lubricants, equipment, fixtures or merchandise.
- 1.4 "Price" means the cost of the Goods and/or Services as agreed between IFUELS and the Customer and includes all out of pocket expenses IFUELS incurs on the Customer's behalf subject to clause 5 of this contract.
- 1.5 "Schedule" means the Schedule to this contract.
- 1.6 "Services" means any services provided by IFUELS to the Customer.

### 2. ACCEPTANCE

- 2.1 Any instructions received by IFUELS from the Customer for the supply of Goods and/or Services shall constitute a binding contract and acceptance of the terms and conditions contained herein.

### 3. PRECEDENCE

- 3.1 The Customer acknowledges that these Terms and Conditions of Application for Commercial Credit take precedence over any terms and conditions contained in any document provided by the Customer.

### 4. PAYMENT & PAYMENT TERMS

- 4.1 Subject to clause 4.2, full payment of the Price shall be due on date/s determined by IFUELS, which may be:
  - 4.1.1 the 7<sup>th</sup> day immediately following the date of delivery or supply; or
  - 4.1.2 the due date specified on IFUELS's invoice.
- 4.2 Payment for any amount outstanding shall be deemed immediately due and payable in any of the following circumstances:
  - 4.2.1 there is non-payment of any sum by the due date;
  - 4.2.2 IFUELS forms the view that the Customer will not pay any sum by its due date;
  - 4.2.3 any Goods in the possession of the Customer are materially damaged;
  - 4.2.4 the Customer is bankrupted or enters administration, liquidation or receivership;
  - 4.2.5 a Court judgment is entered against the Customer and remains unsatisfied for seven (7) days;
  - 4.2.6 any material adverse change in the financial position of the Customer.
- 4.3 Should the Customer not pay for the Goods or Services supplied by IFUELS in accordance with the credit terms as provided herein, or as agreed in writing by IFUELS from time to time, IFUELS will be entitled to charge an administration fee of:
  - (a) 10 percent of the amount of the invoice payable; and
  - (b) A further 10 percent per annum payable per year, or part thereof, until payment by the Customer.
- 4.4 All payments to be made by the Customer will be made without set-off (whether arising at law or in equity) or counterclaim (whether arising at law or in equity) and free and clear of any withholding or deduction whatsoever, unless prohibited by law.
- 4.5 The Customer shall pay (on a full indemnity basis) any and all expenses, disbursements, collection costs and legal costs which IFUELS have incurred or are liable to pay, in connection with the enforcement of any rights and/or preservation of any rights contained in this contract.
- 4.6 For the purposes of clause 4.5, the Customer acknowledges that collection costs may be calculated on a commission basis at a percentage rate of up to 20% of the amount due and expressly agrees to pay for those expenses as liquidated damages on demand, irrespective of whether (a) IFUELS are not liable to pay the collection agent the commission until the Customer has made payment of the Customer's overdue debt (or any portion thereof) and/or (b) the amount of work actually performed by the collection agent before the Customer makes a payment for an overdue debt.
- 4.7 Receipt of a cheque, bill of exchange, or other negotiable instrument shall not constitute payment until it results in IFUELS receiving cleared funds for the entire amount of the negotiable instrument.
- 4.8 A notice signed by an officer of IFUELS stating the amount payable pursuant to this contract shall be conclusive evidence of the amount of debt owing.
- 4.9 The Customer warrants that the information in the Schedule is true and current and complete in every particular.

### 5. INTEREST RATES

- 5.1 The interest rate on any outstanding debts is a fixed rate of 15 percent per annum.

### 6. PRIVACY ACT 1988 (AS AMENDED)

- 6.1 IFUELS collects personal information about the Customer (if a sole trader, individual trustee, or partnership of individuals) for the purposes set out in its Privacy Policy and its Credit Reporting Policy. A copy of these policies can also be provided to the Customer free of charge, upon request.
  - 6.1.1 The Privacy Policy sets out: the personal information IFUELS collects; how IFUELS collects and uses this information; how the Customer may access or correct it; and how the Customer may make a complaint in respect of IFUELS's management of the information;
  - 6.1.2 The Credit Reporting Policy sets out: the types of credit related personal information IFUELS collects; how it is collected, why it is collected; how IFUELS may use and disclose the credit related personal information, including the credit reporting bodies to which IFUELS is likely to disclose the Customer's credit related personal information to; and how a complaint may be made in respect of IFUELS's management of the credit related personal information.
- 6.2 By the Customer providing instructions to IFUELS for the supply of Goods, the Customer is consenting to IFUELS collecting, handling, using, disclosing and otherwise dealing with the Customer's personal information (including credit related personal information) in accordance with the terms of IFUELS's Privacy Policy, its Credit Reporting Policy and in accordance with Australia's privacy laws.

### 7. PRICE

- 7.1 The Price shall, at IFUELS's sole discretion, be:
  - 7.1.1 as stated on any invoice provided by IFUELS to the Customer; or
  - 7.1.2 IFUELS's quoted price (subject to clause 8).



## 8. QUOTATION

- 8.1 Where a quotation is given by IFUELS for Goods:
  - 8.1.1 unless otherwise agreed the quotation shall be valid for 7 days from date of issue;
  - 8.1.2 the quotation shall be exclusive of goods and/or services tax unless specifically stated to the contrary;
  - 8.1.3 IFUELS reserves the right to alter the quotation because of circumstances beyond its control including and, in no way limited to, increases in the price charged by its suppliers for products and/or services.
- 8.2 Where Goods and/or Services are required in addition to the quotation, the Customer agrees to pay for the additional cost of such Goods and/or Services.

## 9. RISK TO GOODS AND DELIVERY

- 9.1 Risk in any Goods shall pass when the Goods are delivered to the Customer or to the location nominated by the Customer. It is the Customer's obligation to insure the Goods from the point of delivery.
- 9.2 Unless IFUELS agrees in writing to the contrary, IFUELS will arrange delivery of the Goods to the Customer to the point of delivery.
- 9.3 The cost of freight and insurance to the point of delivery shall be at the Customer's expense and shall form part of the Price.
- 9.4 The Customer is responsible for ensuring the storage vessel is suitable and appropriate for the product being delivered; if the storage vessel is deemed unsafe or unsuitable for storage of the product being delivered IFUELS may at its absolute discretion refuse undertake delivery of the product and Customer may liable for a restocking fee.
- 9.5 IFUELS shall not be liable for:
  - 9.5.1 late delivery or non-delivery of Goods;
  - 9.5.2 any loss, damage or delay suffered by the Customer arising from the late or non-delivery of Goods; and
  - 9.5.3 any loss or damage to Goods in transit.

## 10. TITLE AND PERSONAL PROPERTY SECURITIES ACT 2009 (PPSA)

### Goods

- 10.1 Whilst risk in the Goods passes on delivery, legal and beneficial title in the Goods shall remain with IFUELS until it has received payment in full for all monies owed by the Customer.
- 10.2 Until IFUELS has received payment in full for all monies owed by the Customer, IFUELS reserves the following rights:
  - 10.2.1 legal and beneficial ownership of the Goods;
  - 10.2.2 the right to enter the Customer's premises and retake possession of the Goods;
  - 10.2.3 the right to keep or resell any Goods repossessed under sub-clause 10.2.2; and
  - 10.2.4 any other rights it may have at law or under the PPSA.
- 10.3 Where, pursuant to sub-clause 10.2.3:
  - 10.3.1 IFUELS resells the Goods repossessed, it is agreed that IFUELS may credit the Customer's account with the net proceeds of sale storage, selling and other costs); or
  - 9.3.2 IFUELS retains possession of the repossessed Goods, it is agreed that IFUELS may credit the Customer's account with the invoice value less such sum as IFUELS reasonably determines on account of wear and tear, depreciation, obsolescence, loss of profit and costs.
- 10.4 IFUELS shall not be liable for any costs, damages, expenses or losses incurred by the Customer or any third party as a result of any action taken to repossess the Goods.
- 10.5 The Customer shall store the Goods separately from other items and in a manner which clearly identifies the Goods as IFUELS's property.
- 10.6 If the Goods are resold by the Customer, the Customer shall hold such part of the proceeds of any such sale as represents the purchase price of the Goods sold in a separate identifiable account as the beneficial property of IFUELS and shall pay such amount to IFUELS upon request;
- 10.7 If the Goods are attached, fixed, or incorporated into any property of the Customer, title in the Goods shall remain with IFUELS until the Customer has made payment for all monies owed to IFUELS and where those Goods are mixed with other property so as to be part of or a constituent of any new product, title to these products shall be deemed to be assigned to IFUELS as security for the full satisfaction by the Customer of the full amount owing to IFUELS.
- 10.8 Until IFUELS receives payment for Goods in full, the Customer acknowledges that IFUELS has a Purchase Money Security Interest ("PMSI") which attaches over the Goods and their proceeds and a Security Interest in relation to other amounts owed by the Customer to IFUELS.

### General

- 10.9 Upon assenting to these Terms and Conditions of Trade, the Customer acknowledges and agrees that these Terms and Conditions of Trade constitute a Security Agreement for the purposes of the PPSA.
- 10.10 The Customer undertakes to do anything (such as obtaining consents, producing documents, producing receipts and getting documents completed and signed) which IFUELS asks and considers reasonably necessary for the purposes of:
  - 10.10.1 ensuring that a PMSI and/or Security Interest is enforceable, perfected and effective;
  - 10.10.2 enabling IFUELS to apply for any registration, or give any notification, in connection with the Security Interest created under this Agreement so that the PMSI and/or Security Interest has the priority required by IFUELS.
- 10.11 To the extent permitted by law, the Customer irrevocably waives its right to:
  - 10.11.1 receive notices or statements under sections 95, 121(4), 125, 130, 132(3)(d), 132(4) and 135 of the PPSA;
  - 10.11.2 redeem the Goods under section 142 of the PPSA;
  - 10.11.3 reinstate the Agreement under section 143 of the PPSA;
  - 10.11.4 receive a Verification Statement.
- 10.12 Nothing in clause 10 prevents IFUELS from taking collection or legal action against the Customer to recover any monies owed from time to time.

## 11. DISPUTES

- 11.1 No claim relating to Goods and/or Services will be considered unless made in writing within 7 days from the date of delivery.

Carnarvon Millstream Newman Karratha Wiluna Port Hedland Exmouth Paraburdoo Wickham Shark Bay Pardoo Roebourne Whaleback Onslow Cosack Pannawonica Wedgefield Biayadanga South Hedland  
Korijini Nanutarra Dirk Hartog Is. Mimiya Broome Tom Price Dampier Halls Creek Marble Bar Wyntham Derby Eighty Mile Fitzroy Crossing Denham Meekatharra Kalbarri Coral Bay Cue Gascoyne Junction  
Warburton Gibson Desert Mt Augustus Point Samson Kununurra Monkey Mia Barrow Is. Fortescue Whim Creek Learmouth Nulagine Hamersley Wittenoom Lake McLeaod Karalundi



## 12. WARRANTY

- 12.1 All implied conditions, warranties and undertakings other than the statutory guarantees set out in Schedule 2 of the Competition and Consumer Act 2010 are expressly excluded to the extent permitted by law.
- 12.2 Where the Goods are of a kind other than goods ordinarily acquired for personal, domestic or household use, then IFUELS's liability is limited, at its option, to anyone or more of the following:
  - 12.2.1 the replacement or supply of the equivalent of the Goods;
  - 12.2.2 the repair of the Goods;
  - 12.2.3 the payment of the costs of replacing the Goods or acquiring their equivalent; or
  - 12.2.4 the payment of the costs of having the Goods repaired.
- 12.3 Where the Services are of a kind other than Services ordinarily provided for personal, domestic or household use, then IFUELS's liability is limited, at its option, to any one or more of the following:
  - 12.3.1 the provision of the equivalent Services;
  - 12.3.2 the provision of the Services;
  - 12.3.3 the payment of the costs of providing the Services or providing their equivalent; or
  - 12.3.4 the payment of the costs of having the Services provided.
- 12.4 Subject to the Customer's rights under Schedule 2 of the Competition and Consumer Act 2010 ("CCA"), IFUELS shall not be liable for:
  - 12.4.1 any loss or damage of any kind whatsoever, arising from the Goods, including consequential loss whether suffered or incurred by the Customer or another person and whether in contract or tort (including negligence) or otherwise and irrespective of whether such loss or damage arises directly or indirectly from the Goods; and
  - 12.4.2 the Customer shall indemnify IFUELS against all claims and loss of any kind whatsoever however caused or arising and without limiting the generality of the foregoing of this clause whether caused or arising as a result of the negligence of IFUELS or otherwise, brought by any person in connection with any matter, act, omission, or error by IFUELS, its agents or employees in connection with the Goods.

## 13. LIABILITY

- 13.1 Manufacturer's warranty applies to the Goods where applicable.
- 13.2 The Customer acknowledges that IFUELS does not make any representations or warranties regarding the Goods and/or Services or any matter which is or might be relevant to the Customer buying or selling the Goods and/or Services other than the representations or warranties expressed in this contract.

## 14. TERMS OF CREDIT

- 14.1 The Customer acknowledges that it has no right to credit or a credit facility from IFUELS and the granting of any credit or credit facility by IFUELS in respect to the supply of the Goods and/or Services will be at IFUELS's absolute discretion.
- 14.2 Where IFUELS is of the opinion any security provided pursuant to clause 9 has diminished in value at any time or withdrawn, IFUELS has absolute discretion to close the credit facility and/or refuse to grant further credit to the Customer.

## 15. CANCELLATION

- 15.1 Orders placed with IFUELS cannot be cancelled without the written approval of IFUELS. In the event that IFUELS accepts the cancellation of any order placed, it shall be entitled to charge a reasonable fee for any work done to the date of the cancellation including a fee for the processing and acceptance of the Customer's order and request for cancellation.

## 16. CHARGE

- 16.1 The Customer hereby charges in favour of IFUELS all of the Customer's estate and interest in any land, freehold or leasehold, in which the Customer now has or which it may later acquire any such interest in, with payment of all monies owing by the Customer to IFUELS from time to time and hereby consents to IFUELS lodging a caveat or caveats which note IFUELS's interest.

## 17. JURISDICTION

- 17.1 These terms and conditions and all matters concerning the business relationship between IFUELS and the Customer shall be governed by the law of the State of Western Australia and the parties submit to the non-exclusive jurisdiction of the court located in Perth, Western Australia for the conduct of any litigation.

## 18. MISCELLANEOUS

- 18.1 The Customer shall immediately notify IFUELS in writing upon any change of the proprietors, shareholders or directors of the customer, or any information set out in the schedule, of such change and the Customer will indemnify IFUELS for any loss arising from the Customer's failure to so notify.
- 18.2 Any notice or demand required to be served, given or made under this contract shall be sufficiently served on the Customer if addressed to the Customer or the Company (as the case may require) and posted by ordinary mail addressed to the addressee at its usual or last known place of business and shall be deemed served two days after having been posted.
- 18.3 IFUELS shall not be liable for delay or failure to perform its obligations if the cause of the delay or failure is beyond its control.
- 18.4 Failure by IFUELS to enforce any of the terms and conditions contained in this contract shall not be deemed to be a waiver of any of its rights or obligations under this contract.
- 18.5 If any provision of this contract shall be invalid, void or unenforceable, the validity, existence, legality and enforceability of the remaining provisions shall not be affected.
- 18.6 Any variation of the terms and conditions contained in this contract must be agreed to in writing by IFUELS for it to have any legal effect.
- 18.7 Where two or more persons constitute the Customer their liability shall be joint and several.
- 18.8 If the Customer is entering into this contract as trustee of a trust, then the Customer represents and warrants to IFUELS that the Customer is liable both personally and in its capacity as trustee and the Customer has power and authority as trustee of the trust to enter into this contract and is doing so for a proper purpose. Further the Customer is entitled to be indemnified fully out of the trust property for its liabilities and obligations as trustee under this contract before the claims of the beneficiaries.

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